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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 In Re: September 11 Litigation

21 MC 101
08 CV 3719 (AKH)
08 CV 3722 (AKH)

4 -----x
5 New York, N.Y.
6 July 15, 2013
7 10:45 a.m.

8 Before:

9 HON. ALVIN K. HELLERSTEIN

District Judge

10
11 APPEARANCES

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and 7 World Trade Co.

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1 APPEARANCES (Cont'd)

2 RICHARD KIBBE & ORBE LLP

Attorneys for Defendant Boeing Co.

3 BY: BRIAN S. FRASER, ESQ.

4 Also Present: John N. Lieber

President

5 World Trade Center Properties, LLC

6 (In open court)

7 THE COURT: This is the trial in the September 11
8 litigation between the WTCP plaintiffs and the 7 World Trade
9 Center plaintiff against the airlines, American Airlines and
10 Globe Security and others.

11 We have Mr. Williamson, Cathi Baglin, Megan Davis, and
12 Jason Cohen for the plaintiffs. We have Desmond Barry, liaison
13 counsel, Roger Podesta, Patrick Byrnes, Erica Weisgerber, Ann
14 Taylor, Willard Wood, and Brian Fraser for the defendants. Did
15 I leave anyone out?

16 OK. So I think we'll start with the defendants
17 because we are trying the defense that the insurance proceeds
18 that were covered by the plaintiffs are of such magnitude as to
19 make it impossible for plaintiffs to recover anything in a tort
20 litigation.

21 Who is going to start?

22 MR. PODESTA: I shall, your Honor.

23 THE COURT: Mr. Podesta.

24 MR. PODESTA: May it please the Court, Roger Podesta
25 for all the aviation defendants, several of whose

D7FAWTC1ps

Opening - Mr. Podesta

1 representatives are present here in the courtroom today.

2 The trial presents for decision a narrow but important
3 issue, whether the \$4.9 billion in insurance recoveries that
4 plaintiffs have received for damage to their leasehold
5 interests in the WTC complex, by which I mean WTC 1, 2, 4, and
6 5, and for WTC 7 correspond to a reasonable degree of certainty
7 to their potential tort damages awards measured under the
8 "lesser of two" rule by the reduction in fair market value of
9 their leasehold interest.

10 The test for correspondence, as adopted by this court
11 from the Second Circuit decision in *Turnbull* and the New York
12 Court of appeals decision in *Oden*, is whether "the collateral
13 source payment represents reimbursement for a particular
14 category of loss that corresponds to a category of loss for
15 which tort damages were awarded. The application of this test
16 to our circumstances presents mixed questions of fact and law
17 for which both the Court's prior rulings and the Court of
18 Appeals' decision in *Fisher v. Qualico* provide substantial
19 guidance.

20 I note that the relevant question is not whether the
21 tort award and the insurance payments are calculated in the
22 same way, but whether the tort award and the insurance payments
23 compensate or reimburse the plaintiff for the same category of
24 loss.

25 It's important to note that plaintiffs acknowledge

D7FAWTC1ps

Opening - Mr. Podesta

1 through their expert professor Steven Shavell that any
2 insurance payments allocable, to a reasonable degree of
3 certainty, to lost rental income correspond for 4545(c)
4 purposes to a tort damage award measured by the reduction in
5 fair market value of plaintiff's leasehold interest.

6 Thus, the only correspondence issue actually in
7 dispute is whether replacement cost insurance payments
8 compensate or reimburse the plaintiffs for the same category of
9 loss as would their tort damages award.

10 To resolve this correspondence issue --

11 THE COURT: Excuse me. (Pause) Sorry.

12 MR. PODESTA: May I resume?

13 To resolve this correspondence issue, there are three
14 basic questions for the Court to decide. First, for what type
15 of loss did the plaintiffs receive insurance payments and in
16 what amounts? Second, for what type of claim may the
17 plaintiffs potentially obtain tort damage awards and in what
18 amount? And finally, do the insurance recoveries and potential
19 tort damage award compensate or reimburse the plaintiffs for
20 the same category of loss, and how complete is the offset?

21 The aviation defendants will establish the answers to
22 these questions at this trial primarily through the testimony
23 of their insurance expert, Michael Beach; their economics
24 expert, Dan Fischel; cross-examination of the plaintiffs'
25 witnesses; and invocation of the Court's prior rulings.

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Opening - Mr. Podesta

1 As to the first question, the insurance question, the
2 Court has already determined that WTCP received a total of
3 \$4.091 billion in insurance payments and that 7 WTC Company has
4 received \$831 million for WTC 7. We plan to show that the full
5 amount of these insurance payments are properly allocable to
6 replacement costs or business interruption, lost rental income,
7 except for about \$1 million that may be allocable to 7 World
8 Trade Company's claim for personal property damages as to
9 WTC 7.

10 THE COURT: Give me that number again, please,
11 Mr. Podesta.

12 MR. PODESTA: 1.8 million. 1.846 million, I believe.

13 THE COURT: Thank you.

14 MR. PODESTA: In this connection, the Court has
15 already ruled, in its September 2009 order, that the aviation
16 defendants have shown that WTCP's entire \$4.091 billion
17 recovery of insurance payments is allocable to replacement
18 costs and business interruption unless WTCP pleads and proves
19 specific facts supporting allocation to additional components.
20 The Court's exact words from paragraph 2 of that order were as
21 follows: "The proofs of loss that WTCP submitted to share
22 insurers presented proofs only of business interruption and
23 replacement cost to the buildings. Settlements with the
24 insurers follow. I rule that the insurance proceeds that WTCP
25 received from its insurers are allocable only to business

D7FAWTC1ps

Opening - Mr. Podesta

1 interruption and replacement costs unless WTCP pleads and
2 proves specific facts supporting allocation to additional
3 components." The Court's 2009 order has thus effectively
4 shifted to plaintiffs the burden of coming forward with
5 evidence that they received insurance payments for something
6 other than business interruption or replacement cost.

7 In response, we expect the plaintiffs to contend that
8 their settlement agreements with their insurers made no
9 allocation of the insurance payments to any particular element
10 of loss and that the releases the insurers received broadly
11 discharged them from all claims, including those of an
12 extra-contractual nature.

13 However, these same arguments were vigorously and
14 unsuccessfully addressed by plaintiffs in response to the 2009
15 collateral offset motion that led to the ruling from which I
16 just quoted. Even if plaintiffs are not foreclosed from
17 pursuing these previously failed arguments, they should prove
18 no more persuasive today than they were in 2013. If the
19 silence of a settlement agreement as to allocation were
20 sufficient --

21 THE COURT: I think you meant 2009.

22 MR. PODESTA: 2009, yes. 2009. I'm sorry.

23 If the silence of a settlement agreement as to
24 allocation were sufficient to defeat correspondence, 4545(c)
25 would soon become a dead letter, for, as the testimony will

D7FAWTC1ps

Opening - Mr. Podesta

1 show, insurance settlements rarely if ever make specific
2 allocation of the payment amount. Under the case law, where
3 the settlement is silent, the proper approach is for the Court
4 to examine the underlying facts and circumstances to identify
5 the claims for which the payments were actually made.

6 Nor does the breadth of the release shed any light on
7 the identity of the paid claims. As the witnesses will
8 acknowledge and as the Court's doubtless own experience will
9 confirm, few entities pay out tens or hundreds of millions of
10 dollars in settlement without obtaining broad protection
11 against all conceivable claims that might arise out of the same
12 loss. Once we look at the evidence, the underlying
13 circumstances, that evidence will demonstrate, first, that
14 insurers rarely if ever make settlement payments for
15 undocumented or unquantified claims, and, second, that out of
16 the many thousands of pages of claim submissions plaintiffs
17 made to their insurers, the only claims that plaintiffs ever
18 documented or quantified were those for replacement costs or
19 its post-covenant actual cash value and business interruption,
20 lost rental income. Plaintiffs freely admit these claims
21 represent by far the largest element of their damages. To be
22 sure, some of plaintiffs' claim submissions to their insurers
23 did list other types of claims as TBD, or to be determined, but
24 plaintiffs never followed up, except for that \$1 million
25 personal property claim for WTC 7, with any substantiation or

D7FAWTC1ps

Opening - Mr. Podesta

1 quantification of any of the TBD claims.

2 In contrast, as to the complex, WTCP engaged in an
3 appraisal proceeding with its insurers limited solely to
4 determination of replacement costs, actual cash value, and lost
5 rental income that consumed 99 days of hearings and testimony
6 and that generated a stipulated \$31 million in legal fees for
7 the appraisal hearing.

8 Under plaintiffs' approach --

9 THE COURT: Who conducted the appraisal hearing?

10 MR. PODESTA: For WTCP, Proskauer.

11 THE COURT: But which judge?

12 MR. PODESTA: Well, I believe it was Judge Mukasey, I
13 believe. It was Judge Martin, directed the proceedings. But
14 they were before an arbitral panel, in effect, of appraisers.

15 THE COURT: Can you tell me?

16 MR. WILLIAMSON: The answer is not Judge Mukasey, not
17 Judge Martin. Umpires, appraisers provided for under the
18 statute and the policies.

19 THE COURT: Under the insurance policies.

20 MR. WILLIAMSON: Yes, and somebody called an umpire.

21 THE COURT: Are you going to go into that?

22 MR. WILLIAMSON: I peg your pardon?

23 THE COURT: Are you going into that?

24 MR. WILLIAMSON: Not in any detail, no.

25 THE COURT: Mr. Podesta, could you describe what

D7FAWTC1ps

Opening - Mr. Podesta

1 happened and in what content.

2 MR. PODESTA: Yes.

3 THE COURT: I don't think I've heard this before.

4 MR. PODESTA: As I understand, the issue between WTCP
5 and its insurers was over what the proper amounts were under
6 their policies for replacement costs, actual cash value, and
7 lost rental income. And a hearing that lasted like 99 days, I
8 think if you count deposition testimony, was performed of the
9 umpires, I believe at the direction of one of the judges I
10 mentioned, to attempt to determine those values. And they did
11 issue some determinations. I can't quote them exactly off the
12 top of my head, but the information is readily available. I
13 believe that they determined that some of the elements of
14 replacement cost totaled some \$4.2 billion. But my point here
15 is really just not to get into the details of the appraisal,
16 but to demonstrate that the focus of the insurance claim
17 submission process was on replacement cost and lost rental
18 income.

19 Now, under plaintiffs' approach, because the
20 settlement agreements are silent and the leases are broad, \$4.9
21 billion in insurance recoveries is by any fair interpretation
22 of the evidence --

23 THE COURT: 4.09.

24 MR. PODESTA: 4.9. No, 4.9. When I say 4.9, I'm
25 adding together 4.091 and 7.37. When I refer to plaintiffs, I

D7FAWTC1ps

Opening - Mr. Podesta

1 include both WTCP and WTC 7.

2 THE COURT: I'm being confused on numbers.

3 MR. PODESTA: All right.

4 THE COURT: You told me that the total insurance
5 recovery from 7 World Trade Center was .831, or 31 million, and
6 the total of recovery from all the other World Trade Center
7 Properties was 4.09 billion.

8 MR. PODESTA: That's right. And that adds up to
9 4.922.

10 THE COURT: OK.

11 MR. PODESTA: Thank you, your Honor.

12 That 4.9 billion would yield no insurance offset at
13 all under plaintiffs' approach, and we believe that such a
14 result would disregard the factual reality of the claims
15 adjustment process and provide claims with a combined tort and
16 insurance recovery of some \$8.4 billion, 4.9 billion plus 2.8
17 million for the complex, plus 700 million for WTC 7, which is
18 more than two and a half times the pre-9/11 fair market value
19 of the plaintiffs' leasehold.

20 Now, as to the second question --

21 THE COURT: What was the fair market value -- I fixed
22 the fair market value of all the towers but 7.

23 MR. PODESTA: No, you fixed the fair market value of 7
24 as well, at 737 million, in your December 2012 opinion.

25 As to the second question, the tort damages, the Court

D7FAWTC1ps

Opening - Mr. Podesta

1 has already ruled on the nature and amount of the plaintiffs'
2 potential tort damage award. The Court has repeatedly held
3 that plaintiffs' tort damages are governed by the "lesser of
4 two" rule, that permits the property damage claim to recover
5 the replacement cost of its property or the reduction in the
6 property's fair market value, whichever dollar amount is lower.
7 In the complex case, the Court determined on summary judgment
8 that the fair market value of WTCP's leasehold in the complex
9 prior to 9/11 was 2.805 billion and that the replacement costs
10 sought by WTCP were substantially higher. Accordingly, the
11 Court held that the WTCP's replacement for its tort damages, or
12 its leasehold interest in the complex, cannot exceed 2.85
13 billion. Similarly, as to WTC 7, the Court has held that the
14 fair market value of 7 WTC Co.'s leasehold prior to 9/11 was
15 \$737 million and, assuming replacement costs to be higher for
16 purposes of the summary judgment motion, capped 7 WTC Co.'s
17 potential tort damages award at \$737 million.

18 So I think there really should be very little dispute
19 as to the nature and amount of the tort damage award. And that
20 brings us to the final question, correspondence. We expect to
21 establish that the relevant category of loss here is, as it was
22 in the *Fisher* case, lost property value, or, more precisely,
23 the economic damage in place of the leasehold interest that
24 plaintiffs sustained as a result of the destruction of their
25 lease buildings in the terrorist attacks, will show that both

D7FAWTC1ps

Opening - Mr. Podesta

1 their insurance payments and their principal tort damage
2 awards, potential tort damage awards, compensate and reimburse
3 plaintiffs for the same category of loss for both types of
4 insurance payments.

5 As to the tort damage awards, Professor Fischel, our
6 economic expert, will explain that the award to plaintiffs of
7 the fair market value of their leasehold interest in the
8 complex of WTC 7 as they stood immediately prior to 911 will
9 fully restore to them the economic value of these leaseholds
10 that they lost as a result of the lease buildings. Indeed, the
11 Court has already held in its December 2008 partial summary
12 judgment ruling that "the price WTCP paid for the 99-year
13 leases it acquired from Port Authority represents a full and
14 fair market price for the property." If WTCP is entitled to
15 recover, recovery of the property's market value would fully
16 compensate.

17 That leaves us only with the question of whether
18 plaintiffs' insurance recoveries also compensate them for the
19 economic damage to their leasehold interest in the terrorist
20 tax. In this regard, the aviation defendants agree with
21 plaintiffs' expert, Professor Shavell, that plaintiffs' two
22 types of insurance payments, replacement cost and business
23 interruption, must be separately analyzed to determine whether
24 they meet 4545(c) correspondence standards. That inquiry is
25 quite straightforward as to the lost rental income, business

D7FAWTC1ps

Opening - Mr. Podesta

1 interruption insurance payments. It's undisputed that the
2 reduction in market value of plaintiffs' leasehold interest is
3 due in large part to a loss of rental income generated by
4 destroyed buildings. As Professor Shavell acknowledges and as
5 Professor Fischel will confirm, the lost rental income
6 insurance payments compensate plaintiffs for and correspond to
7 the portion of plaintiffs' lost rental income that they
8 sustained during the period the leased buildings were being
9 replaced.

10 That brings us to the final question, replacement
11 costs. The correspondence analysis concerning plaintiffs'
12 replacement cost payments is greatly illuminated by the Court
13 of Appeals decision in *Fisher*. In that case, the Court
14 unanimously held that the *Fisher*'s replacement cost insurance
15 payments entirely offset their "lesser of two" tort damage
16 award measured by the reduction in the fair market value of
17 their property through the destruction of their home in a fire.
18 The Court reasoned that the relevant category of loss was the
19 *Fishers*' lost property value and that replacement costs and
20 reduction in fair market value were merely two different ways
21 of measuring that lost property value, with the "lesser of two"
22 amounts providing full compensation for the loss.

23 To be sure, *Fisher* involved a fee simple interest in
24 residential owner-occupied housing. But nothing in the
25 reasoning of the decision limits its principles to that

D7FAWTC1ps

Opening - Mr. Podesta

1 particular factual circumstance. Indeed, this Court has
2 already held that the "lesser of two" rule applies to
3 plaintiffs' long-term leaseholdings. And Professor Shavell
4 admitted at his deposition that if the Fishers had rented out
5 their home to others, their replacement cost insurance payments
6 would still correspond to and offset their reduction in fair
7 market value tort damages. Professor Fischel will explain that
8 the economic principles underlying the *Fisher* decision are
9 equally applicable to our circumstance.

10 Plaintiffs' principal argument against correspondence
11 that we will refute through our testimony appears to be that
12 replacement cost insurance payments can correspond only to tort
13 damage awards for replacement costs and not to award for
14 reduction in fair market value, on the theory that replacement
15 costs and fair market value represent two different categories
16 of loss. That argument not only flies in the face of the Court
17 of Appeals' holding in *Fisher*, but it is identical to the
18 argument that the Fishers themselves unsuccessfully made to the
19 Court of Appeals. That court summarized the Fishers' position
20 as follows: "Rather, the Fishers contend that for the purpose
21 of the CPLR 4545(c) offset, cost of restoration and diminution
22 in market value represent two different categories of loss and
23 replacement cost insurance proceeds correspond only to the
24 first." The Court of Appeals' response constitutes a
25 definitive rejection of this argument that replacement cost and

D7FAWTC1ps

Opening - Mr. Podesta

1 fair market value are different categories of loss. The Court
2 said, "As recognized in our case law, however, replacement cost
3 and diminution in market value are simply two sides of the same
4 coin. Each is a proper way to measure lost property value, the
5 lower of the two figures affording full compensation to the
6 owner. In this case, the collateral source payment, the
7 Fishers' replacement cost insurance proceeds, thus corresponds
8 to their property loss and was properly offset against the
9 damages award.

10 Plaintiffs' efforts to portray replacement costs and
11 lost rental income during the rebuilding period as distinctly
12 separate categories of loss are especially ill founded because
13 New York law has long permitted plaintiffs seeking recovery of
14 replacement costs to recover both the physical costs of
15 reconstruction and loss of income during the reconstruction
16 period so long as the total of the two does not exceed the
17 reduction in fair market value of their property.

18 In our pretrial brief we cite cases from New York
19 taking this approach as far back as 1897 and 1908. Rebuilding
20 a period of lost rental income is not a distinct category of
21 loss but an adjunct element of New York's traditional
22 replacement cost remedy, a remedy that is fully provided and
23 covered by a fair market value tort damages award that reflects
24 expected lost profits for the full term of the leasehold.

25 Plaintiffs and Professor Shavell secondarily

D7FAWTC1ps

Opening - Mr. Podesta

1 advance --

2 THE COURT: I think we're going well beyond the
3 purpose of the opening statement, Mr. Podesta.

4 MR. PODESTA: OK. Thank you. I will just make two
5 more comments and then I will conclude.

6 I would like to address the issue of the contractual
7 obligation to rebuild. We expect to show, through the
8 testimony of the witnesses, that the contractual obligation to
9 rebuild affects neither the tort side nor the insurance side of
10 the correspondence analysis. It doesn't affect the tort side
11 because a contractual obligation to rebuild cannot give rise to
12 a tort damage award because the Court has already held --

13 THE COURT: This is all covered already in my
14 opinions. Why do we need to go into this again?

15 MR. PODESTA: Well, on the insurance side, I just want
16 to make clear that we have a stipulation that the WTCP's
17 insurance policies did not condition the recovery of
18 replacement costs on any contractual obligation to rebuild, and
19 we've obtained admissions from Mr. Reilly, WTCP's claims
20 adjustor, that the contractual obligation to rebuild had
21 nothing to do with any payments made by the insurers. And of
22 course -- and this is in the briefs and I'm sure Mr. Williamson
23 will address it as well perhaps -- but our position is that
24 your Honor has not barred plaintiffs from recovering
25 replacement costs under the "lesser of two" standard; it's

D7FAWTC1ps

Opening - Mr. Podesta

1 simply held that they cannot recover replacement costs in
2 excess of reduction in fair market value on the basis of their
3 contractual obligation to rebuild. But the Court has never
4 held that they were not the cause of replacement costs, that
5 they could not recover as a 99-year lessee or as the -- and
6 assuming this debt of the Port Authority as fee simple owner.

7 Finally, a few words about allocation. The aviation
8 defendants do not believe that it's necessary to allocate
9 plaintiffs' insurance payments between replacement costs and
10 business interruption. As Professor Fischel will explain,
11 allocation is unnecessary because there is 4545(c)
12 correspondence for both types of insurance payments. Both of
13 them compensate the plaintiffs for the economic damages to
14 their leasehold interest caused by the destruction of the
15 leased buildings, which is the same loss for which the tort
16 damages award will compensate them. The only minor allocation
17 issue that might arise in the case is how much of 7 WTC Co.'s
18 \$831 million in insurance payments should be allocated to its
19 \$1.846 million personal property claim. There's no issue as to
20 correspondence as to personal property, but Mr. Levy, WTC Co.'s
21 corporate representative, has admitted the insurance settlement
22 covered the personal property claim, and personal property
23 insurance payments of course correspond to a personal property
24 loss.

25 As a prejudgment interest, we have a stipulation --

D7FAWTC1ps

Opening - Mr. Podesta

1 THE COURT: It was a different insuring clause that
2 covered the personal property, wasn't it?

3 MR. PODESTA: Yes, it was, your Honor.

4 THE COURT: And the value of the personal property did
5 not add to the value of the building and the leasehold.

6 MR. PODESTA: No, it did not. It's a separate --

7 THE COURT: Separate category.

8 MR. PODESTA: It's a separate, relatively small
9 category of claim.

10 THE COURT: So the recovery of that amount, which is,
11 I think you told me --

12 MR. PODESTA: 1.8 million.

13 THE COURT: -- \$1.846 million, has nothing to do with
14 the issue we have here. It's clearly outside the
15 correspondence.

16 MR. PODESTA: Well, there is a -- I think there is no
17 doubt that there is correspondence as to personal property.
18 The question is how much of that 831 million is to be offset to
19 the \$1.8 million personal property claim, whether it's to be
20 completely offset or there has to be some method of allocation.

21 There's one other little wrinkle --

22 THE COURT: What do you think?

23 MR. PODESTA: Pardon me?

24 THE COURT: What do you think?

25 MR. PODESTA: I believe since it was an undisputed

D7FAWTC1ps

Opening - Mr. Podesta

1 claim and there's plenty of insurance, it should be completely
2 offset. I believe Mr. Williamson may advance a different view.

3 One final little wrinkle: 7 WTC Co. has a separate
4 fine arts claim for the destruction of two pieces of artwork at
5 WTC 7 that was covered under a different policy than the main
6 IRI policy. The parties have stipulated that the maximum
7 recovery amount of that claim is \$1 million, as to which an
8 insurance payment offset of \$700,000 applies. Thus, whatever
9 the outcome of this trial, a claim of about \$300,000 on the
10 part of WTC Co. will survive, relating to fine arts.

11 The only other thing I want to --

12 THE COURT: Were they two Frank Stella paintings?

13 MR. PODESTA: That's correct, your Honor.

14 The only other point I want to make in my opening is
15 that we will be submitting through Professor Shavell two
16 declarations of Rajiv Gokhale as to the admissibility which the
17 parties are stipulating calculating the prejudgment interest
18 that would be owed both on the complex tort award and --

19 THE COURT: It's silly for me to deal with that now
20 because it follows on other findings. You can talk about it
21 later.

22 MR. PODESTA: Fine.

23 THE COURT: What are the components of the tort
24 recovery, in your opinion?

25 MR. PODESTA: Well, in the "lesser of two" tort

D7FAWTC1ps

Opening - Mr. Podesta

1 damages, which can be measured by replacement costs or
2 reduction in fair market value, in both cases, we have assumed
3 or it's been shown that replacement costs exceed reduction in
4 fair market value. Thus, the award is measured by reduction in
5 fair market value. But it is an award, the component is damage
6 to property interest, lost property value, as we explained in
7 *Fisher*. So that you can characterize the 2.8 billion and the
8 700 million as a recovery of either or both replacement costs
9 or reduction in fair market value.

10 THE COURT: Before 9/11, the WTCP interests had an
11 expectancy of cash flow over a period of time, made possible by
12 the existence of these income-producing properties. Then the
13 properties got destroyed, and their ability to receive rental
14 income during the course of that destruction and before
15 replacement would reduce to zero their income. And they would
16 then have, I think, the ability to be compensated in some
17 fashion for that lost income, setting off in some complicated
18 way the cost of reconstruction, the amounts of rent they
19 continue to have to pay, and the like, which I take it would be
20 the subject of expert discussion. What's your view of things?

21 MR. PODESTA: Yes. Well, under *Fisher* and I believe
22 under the Court's ruling, an award of the full fair market
23 value of their leasehold interest as they stood on 9/11 would
24 fully compensate them for any future anticipated lost rental
25 income.

D7FAWTC1ps

Opening - Mr. Podesta

1 THE COURT: So how do I measure this fair market value
2 that was reduced to zero against insurance recoveries that were
3 based on, let us say, replacement values and lost income?

4 MR. PODESTA: Well, as to lost income it's very
5 simple, because it's basically agreed by the parties that the
6 fair market value, reduction in fair market value covers lost
7 rental income during the rental period, and of course a fair
8 market value award covers the full rental period.

9 As far as replacement costs, you don't have to find
10 anything relating specifically to the amount of replacement
11 cost because it's the same principle as in *Fisher*. Replacement
12 costs and diminution --

13 THE COURT: So no correspondence or full
14 correspondence?

15 MR. PODESTA: Full correspondence under *Fisher*.

16 THE COURT: What am I corresponding?

17 MR. PODESTA: Well, we would say you're corresponding,
18 the correspondence is between the replacement cost and lost
19 rental income insurance recoveries to the economic damage to
20 the leasehold costs in the properties, which is in turn fully
21 compensated by a reduction in fair market value tort.

22 THE COURT: This is the end of the replacement cost,
23 and with the benefit of the insurance for the lost rental
24 income, there would be a total restoration of the value of the
25 property.

D7FAWTC1ps

Opening - Mr. Podesta

1 MR. PODESTA: That's our position, your Honor.

2 THE COURT: Which expert is going to tell me this?

3 MR. PODESTA: Professor Fischel is going to testify to
4 this. And of course Mr. Beach, in setting forth what the
5 payments were for, will also shed relevant factual information
6 on this.

7 THE COURT: All right. Let me hear Mr. Williamson.

8 MR. WILLIAMSON: Good morning, your Honor. May I
9 proceed?

10 THE COURT: Please.

11 MR. WILLIAMSON: Thank you.

12 May it please the Court: Richard Williamson, Williams
13 Zulack Williamson & Zauderer, representing the plaintiffs. I'd
14 like to begin by introducing Mr. John Lieber.

15 THE COURT: How do you do.

16 MR. WILLIAMSON: Mr. Lieber is the president of World
17 Trade Center Properties.

18 THE COURT: Nice to have you in court, Mr. Lieber.

19 MR. WILLIAMSON: And plaintiffs are committed to
20 completing their mission to rebuild the World Trade Center.
21 And on a personal note, I myself am honored and our firm is
22 honored to represent these plaintiffs in this trial. We've
23 been representing them since September 17th, 2001. And we are
24 pleased to be here today.

25 The defendants' inability to meet their burden of

D7FAWTC1ps

Opening - Mr. Williamson

1 proving correspondence is best demonstrated by fact that they
2 do not address, they cannot address, and they did not just now
3 address your Honor's rulings and your Honor's holdings. Your
4 Honor has held that plaintiffs have sustained different
5 categories of losses, not one loss.

6 If we take a look at what the plaintiffs have set up
7 in their pretrial brief, we can see that they have set up what
8 produces a foregone conclusion, as they must to get to their
9 desired result. They tell your Honor, "The category of loss
10 for which plaintiffs seek recovery in tort" -- so that's the
11 tort recovery's branch of the equation -- "is the economic
12 damage to their net leasehold interests." Then they tell the
13 Court, "The category of loss for which plaintiffs received
14 insurance payments," the second half of the equation, is -- of
15 course it has to be the same thing -- "the economic damage to
16 their net leasehold interests."

17 Well, that's obviously circular. It's designed to be
18 circular because it's a zero-sum game. And to get to their
19 preordained result, they have to be able to say they're
20 identical.

21 Let's take a step back and use a prism of common sense
22 to examine this proposition that is at the core and foundation
23 of their position. If you ask a veterinarian, What are the
24 categories of animals that you treat, the veterinarian might
25 say, cats, dogs, birds. The veterinarian would not say to you,

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Opening - Mr. Williamson

1 The categories of animals that I treat are animals. If you ask
2 a grocer, What are the categories of food that you sell in your
3 grocery store, the grocer might say, Produce, dairy, meat. The
4 grocer would not say to you, The categories of food that I sell
5 in the grocery store are food. One more. If you ask a taxi
6 driver, What are the categories of economic loss you suffered
7 from the accident that you were in, the taxi driver might say,
8 Well, replacement cost of the vehicle, I have lost revenue,
9 losing fares, I have medical expenses. The taxi driver would
10 not say to you that the categories of economic loss that I
11 suffered from the accident are economic loss.

12 Let's take a look at what the aviation defendants are
13 doing. It's exactly that. They, when asked, What are the
14 categories of economic loss suffered by the plaintiffs, they
15 answer, Economic loss. As I say, it's circular.

16 We submit that this is an abuse of the CPLR 4545
17 analysis, designed to achieve a windfall for the aviation
18 defendants. They presented a theory which, even if they are
19 found liable by a jury in this case for the destruction of the
20 World Trade Center based on their negligence, they will not pay
21 a penny and plaintiffs will be deprived of moneys needed to
22 rebuild and replace what was lost. I submit that would be an
23 injustice, to the public policies underlying the tort system
24 and the purposes of CPLR 4545. It would reward the tortfeasor
25 and punish the victim.

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Opening - Mr. Williamson

1 Therefore, we are opposing defendants' effort to
2 deprive the plaintiffs of recovery the damages to their
3 leaseholds that your Honor has already found exist.

4 We are here to assist your Honor in determining
5 whether any collateral offset can be found based on payments
6 that were received from insurance or otherwise against any tort
7 damages at all. Your Honor knows the standard, reasonable
8 certainty, is the burden of proof they must meet. And they
9 have to prove, words that were omitted by my colleague, they
10 have to prove close and direct correspondence to the categories
11 of economic losses recoverable in tort on the one hand and the
12 categories of insurance recoveries on the other hand. That is,
13 as was acknowledged and as your Honor has previously held, a
14 mixed question of fact and law.

15 But here we have the aviation defendants and their
16 expert, Mr. Fischel, refusing to do a breakdown, even though
17 *Oden* and *Turnbull* teach us, you must examine what are the
18 essential elements of the economic losses that are suffered.
19 You must break them down into categories, also sometimes
20 referred to as items. Does Professor Fischel do that? Do the
21 aviation defendants do that? No, they do not. They refuse, as
22 we just saw, in the slide, which is an excerpt of their brief.

23 Now let's take a look at both sides of the equation
24 here. With respect to insurance recoveries, they tell you
25 that -- well, your Honor has previously found that World Trade

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Opening - Mr. Williamson

1 Center Properties' claim mainly fell into two categories,
2 property damage, and then also the business interruption
3 insurance, to compensate for World Trade Center Property's lost
4 revenue stream, as you were just discussing, and to defray the
5 burden of a continuing obligation to pay rent, as you also just
6 mentioned. So with regard to that, the aviation defendants do
7 not want to have those two categories that your Honor has held.

8 So we will offer the testimony of Mr. McKinley, who is
9 an insurance expert of over 40 years of experience as an
10 insurance underwriter, broker, program manager, and insurance
11 and risk management consultant. He will explain that your
12 Honor is correct, that there are multiple categories of loss
13 triggering multiple categories of insurance coverage.

14 Mr. Reilly, who was referenced before, was the co-lead adjustor
15 for the other side, and his report will be offered to your
16 Honor. He explains that when he was looking at the claims that
17 were coming in following 9/11, again, being co-lead adjustor
18 for the insurers, they identified multiple categories of losses
19 for which there were multiple claims. And that's completely
20 consistent with what your Honor held in the decision we just
21 looked at.

22 Now, with regard to what are the categories of losses,
23 the other side of the equation, we will hear from Professor
24 Steven Shavell. He's a Ph.D. economist at Harvard Law School.
25 He has analyzed all of this and found that there are two major

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Opening - Mr. Williamson

1 categories of economic loss that were suffered on 9/11. One
2 was the lost rental income, which we have just talked about.
3 And the other was replacement costs.

4 And interestingly, that's exactly consistent with what
5 your Honor has found. If you look at the slide that discusses
6 the Judge's finding, yes, your Honor found that "WTCP suffered
7 different categories of loss." Different categories of loss.

8 THE COURT: Can I ask you a question, Mr. Williamson?

9 MR. WILLIAMSON: Yes, your Honor.

10 THE COURT: How do we deal with these flashes that are
11 before me in relationship to the record?

12 MR. WILLIAMSON: The answer is that I've thought about
13 that and I think the answer is these are demonstrative aids for
14 purpose of the opening. I'm not offering them in evidence.
15 And I believe that's consistent, permissible with the case law,
16 in your Honor's discretion. I can happily have a set made if
17 you wish.

18 THE COURT: Is that OK with defendants?

19 MR. PODESTA: Yes, I believe it is. These are largely
20 excerpts from --

21 THE COURT: That's fine.

22 MR. WILLIAMSON: So what's important about this is
23 your Honor has recognized and held that WTCP suffered different
24 categories of loss, not what Mr. Fischel says, not what the
25 aviation defendants say. And it's consistent with what

D7FAWTC1ps

Opening - Mr. Williamson

1 Professor Shavell, our expert, says. Also, looking at this
2 slide of your finding in this regard, you will not find it in
3 the compendium of your decisions submitted by the aviation
4 defendants last Friday night. We've added it to what we
5 submitted this morning because it's missing.

6 Also, you won't find it in their pretrial brief. It's
7 vanished.

8 THE COURT: I've read my whole decision again, series
9 of decisions again. So I assume that the excerpts that each
10 side is putting before me are included in the whole, which I
11 read. So it really didn't make any difference.

12 MR. WILLIAMSON: I think that's right, your Honor.
13 The point being, though, we thought it to be a complete set of
14 excerpts and this is missing. I think that's symptomatic of
15 the problem.

16 THE COURT: I wouldn't dwell on that. Each side can
17 put before me that which is interesting to each side.

18 MR. WILLIAMSON: Yes, your Honor.

19 Let me turn now to the subject of windfall, which is
20 at the core of some of the underlying tension here in the
21 points of view. We all recognize that CPLR 4545 is designed to
22 avoid windfalls. But it's not just windfalls to plaintiffs.
23 It's also windfalls to defendants, as the Court of Appeals has
24 taught us.

25 With regard to the first branch of that, making sure

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Opening - Mr. Williamson

1 that plaintiffs don't receive any windfalls, we have the *Fisher*
2 case, where the Court of Appeals said it's designed in part "to
3 assure plaintiffs are fully compensated but not
4 overcompensated." Well, that's what the plaintiffs seek here,
5 to be fully compensated but not overcompensated.

6 And then some years later, the Court of Appeals
7 speaking in *Bryant* explained that CPLR 4545 -- this is the flip
8 side of it -- was intended to eliminate double recoveries but
9 not to provide defendants and their insurers with an undeserved
10 windfall, which is what we submit the defendants are seeking
11 here.

12 (Continued on next page)

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Opening - Mr. Williamson

1 MR. WILLIAMSON: (Continuing) Those are the guiding
2 principles that our experts accepted. Those are the guiding
3 principles that we accept for the purposes of this trial.

4 Our experts will discuss the fact Professor Fischel
5 will address that even if there's no offset, plaintiffs will
6 not be made whole. So, your Honor does not need to fear the
7 possibility of a windfall for the plaintiffs, and that's
8 because the losses here are so enormous and there just wasn't
9 enough insurance to compensate the plaintiffs for all of those
10 losses. That's known as underinsurance, which is a problem
11 that happens to many people when a catastrophic accident
12 befalls them.

13 There's another category of problem or another aspect
14 to it, and that is, uninsured losses. And that happens when
15 you suffer losses for which there just is no insurance, so your
16 losses become even greater than, and you just can't recover
17 enough insurance or even enough in tort to compensate you for
18 them and make you whole.

19 So there's no chance in this case, in terms of the
20 equities, that the insurers will have to pay a penny more than
21 the damages that their insureds, the aviation defendants,
22 caused.

23 Turning to a different subject: Your Honor had told
24 us in January, when you scheduled this trial, that you wanted
25 to hear, you needed to know, the claims that were made and

D7fkwitc2

Opening - Mr. Williamson

1 their components. So let's take a quick look at that because
2 that evidence will be before you, as you requested it to be.

3 With regard to the main site first, in World Trade
4 Center Properties, the claims, as noted, far exceeded the
5 policy limits. Pulling up for you first, we have the
6 replacement cost claims which were just approximately
7 7.2 billion for the main site, for the actual replacement
8 costs, and then we have for the lost rental income component,
9 the claims totaled approximately 1.35 billion. In each case
10 I'm just rounding for simplicity.

11 These amounts did not come out of thin air. They were
12 painstakingly calculated by Deloitte --

13 THE COURT: May I get those amounts, please?

14 MR. WILLIAMSON: Yes, your Honor.

15 THE COURT: These are the proofs -- did you do a proof
16 of insurance?

17 MR. WILLIAMSON: Yes, exactly. It's called a PPOPL;
18 it's a preliminary proof of partial loss. That's what you're
19 looking at, one of them. There were many of them, and they
20 will be in evidence at this trial, assuming you let them into
21 evidence. And this is the one for --

22 THE COURT: They were submitted to the insurance
23 company?

24 MR. WILLIAMSON: Yes, yes, absolutely. So,
25 \$7,183,441,908.

D7fkwitc2

Opening - Mr. Williamson

1 THE COURT: 908?

2 MR. WILLIAMSON: 908 is correct, your Honor.

3 THE COURT: And that was?

4 MR. WILLIAMSON: For replacement costs for the main
5 site.

6 THE COURT: Including 7?

7 MR. WILLIAMSON: No, no, for the main site. I'm going
8 to go to 7 in a minute. I'm not merging them. I heard
9 Mr. Podesta do that, but these are separate parties, separate
10 plaintiffs. I'm not going to merge them. I think it muddies
11 the analysis, frankly. So, no, it's just the main site, just
12 World Trade Center Properties plaintiffs, your Honor.

13 THE COURT: OK.

14 MR. WILLIAMSON: So, that's replacement costs.

15 So, if you look at the business income component, the
16 lost rents, you have \$1,347,805,679, your Honor.

17 THE COURT: 1,347,805,679?

18 MR. WILLIAMSON: 679, yes, that's correct, your Honor.

19 THE COURT: That's the total of business interruption?

20 MR. WILLIAMSON: For the main site, for World Trade
21 Center Properties plaintiffs, yes, correct.

22 THE COURT: OK.

23 MR. WILLIAMSON: So what I was pointing out was that
24 Deloitte, Tishman, Cambridge Horizon, now a part of Aon, and
25 other professionals, did all of this calculation and

D7fkwtc2

Opening - Mr. Williamson

1 substantiation and documentation of all of these losses. So,
2 these numbers do not just come out of a hat.

3 Now, if the proofs of losses had been submitted to the
4 insurers the way the aviation defendants and their expert,
5 Danny Fischel, would like to do it, it would have been one
6 proof of loss for one big economic loss, undifferentiated, not
7 broken down, just one big economic loss. Or we can take it
8 from their brief, as we did earlier -- they could say, here's a
9 proof of loss for about 8.4 billion and it's for the economic
10 damage to our net leasehold interests. Our experts will
11 testify that if that had happened, that would have been
12 rejected out of hand. It's nonsense. The argument defies
13 reality because it is contradicted by reality. Economic loss
14 is not a category of loss. It's the basket in which one finds
15 various types of economic losses or, in the words of the Court
16 of Appeals, items of economic. And Oden and Turnbull are
17 absolutely clear that you must break it down. You can't just
18 say, I have economic loss. That's what they're doing. And the
19 fact that such a claim would have been rejected, as you will
20 hear, really proves the point.

21 Now let me turn to 7, because your Honor asked about 7
22 and I will quickly give you the same quantifications.

23 First off, for replacement costs on 7, the proofs of
24 loss totaled \$1,053,399,635. I can give you copies of these
25 slides if it's actually easier for your Honor, whatever you

D7fkwitc2

Opening - Mr. Williamson

1 prefer, but that's the number for replacement costs. And,
2 again, you'll see this in evidence; this was the claim.

3 Do you have that amount? Should I go to the next one?

4 THE COURT: Please proceed.

5 MR. WILLIAMSON: Yes, thank you. I'll go to the next
6 one, which is for the lost rental income time element, it's
7 called under the coverage, \$441,698,256. So, \$441,698,256 for
8 lost rental income.

9 Mr. McKinley will explain, where it says time element,
10 that's how the coverage was categorized for the 7 World Trade
11 Company policy.

12 And you also have extra expense, which is noted, and
13 that had not been quantified at the time this was first
14 submitted.

15 Then the next and last in the series is one you asked
16 about, which is personal property and business property. And
17 here you have \$1,846,139.43.

18 THE COURT: Which is the main or the --

19 MR. WILLIAMSON: This is 7, we're all on 7. The last
20 two and --

21 THE COURT: You didn't give me a number for that with
22 the main, though.

23 MR. WILLIAMSON: You're correct. I didn't break it
24 down separately, you're correct, and I'll explain why. That's
25 because there were a whole -- let me just get you this number

D7fkwitc2

Opening - Mr. Williamson

1 and make one point first.

2 So, you've got the 1,846,000, which Mr. Podesta had
3 given you. If you want to go right out to the pennies, it's
4 \$139.43. You asked Mr. Podesta, is that under a different
5 insurance policy, and he said yes. But it's a mistake --

6 THE COURT: Different insuring agreement, I guess?
7 There are usually several insurance agreements in a particular
8 policy.

9 MR. WILLIAMSON: This is part of the same policy, it's
10 one of the categories of coverage.

11 THE COURT: That's how he answered.

12 MR. WILLIAMSON: OK.

13 And with respect to this, and why I didn't give you
14 the same number on the main site, it's because there was a
15 group of claims -- and I could show them all to your Honor and
16 they're available in evidence -- called TBD, they're to be
17 determined. And those were claims where the insured, World
18 Trade Center Properties and also 7, put the insurers on notice,
19 we have additional claims. But there's chaos reigning, and as
20 we get to it, we will quantify those two, but we're giving you
21 what we've got so far. So, we're putting you on notice we've
22 got other claims, and they would say TBD and if the losses had
23 been resolved, as they ultimately all were, the insured would
24 have had to be providing additional dollar amounts and
25 documentation for those, and it would have.

D7fkwtc2

Opening - Mr. Williamson

1 But the claims adjustment process then began.
2 Mr. Reilly, again the colead adjuster for the other side but
3 now our expert witness, established that there were separate
4 categories of loss, separate claims for different categories of
5 losses, and they were being analyzed and matched up against the
6 categories of insurance coverage that existed.

7 Payments began to be made. This is again going to get
8 into the things your Honor wanted covered back in January when
9 you said the trial would be held now. The payments were made
10 along the way. The lion's share of the payments come later but
11 there were payments on account. There were payments without
12 prejudice, there were no allocations, there was disagreement as
13 to what the claims payments were being made for. Sometimes
14 they would reject the proof of loss or the preliminary proof of
15 loss, but they'd pay some money along the way on account. And
16 it went on like that for a while.

17 Your Honor has mentioned, and I think Mr. Podesta
18 mentioned, that all of the 4.091 billion came from insurance
19 policies or for insurance policy coverage, and there are two
20 exceptions to that. One is that there was actually a 17-1/2
21 million that did not come from an insurance policy. The
22 company got sued -- I can give you the exact name, a company by
23 the name of Royal, it begins with -- and they were sued for
24 fraud and other claims in New York State Supreme Court. They
25 had a relationship to a company that had sold insurance but

D7fkwitc2

Opening - Mr. Williamson

1 they had not sold any insurance. And that case was litigated
2 in New York Supreme and ultimately did settle. So they did not
3 pay that money pursuant to any insurance policy at all.

4 THE COURT: Why do I need to know this?

5 MR. WILLIAMSON: Because, to the extent that the
6 notion is being put forward -- and I just heard it being
7 forward -- that all of this money was for insurance policies
8 that had been purchased, that's wrong.

9 THE COURT: All of which money? All of the money that
10 was paid?

11 MR. WILLIAMSON: Yes, the 4.091.

12 And then on 7, you also heard the same thing, that the
13 831 million number that's being used was all for insurance
14 proceeds, and that's not correct either. 819 of it is, and
15 11.9 -- rounded off to 12 million -- is actually 7 World Trade
16 Company's share of monies recovered from the tort feasons from
17 the aviation defendants by way of settlement with IRI. So,
18 there are just two separate categories, and painting with too
19 broad a brush leads to errors in the analysis. That's the
20 point.

21 Your Honor noted --

22 THE COURT: Are you going to give me a document a
23 paper that summarizes all this?

24 MR. WILLIAMSON: I absolutely can. Yes, absolutely.
25 I and my colleagues will be happy to work harder on that and

D7fkwtc2

Opening - Mr. Williamson

1 have it for you, yes, your Honor, absolutely.

2 Lawsuits: Lawsuits broke out. Why did they matter?
3 I'll tell you. First, what happened? Swiss Re and others
4 brought lawsuits, starting with the one-occurrence/
5 two-occurrence issues and segueing into other issues, as you
6 know, and they were handled by Judge Martin and then Judge
7 Mukasey.

8 World Trade Center Properties asserted counterclaims,
9 called extra-contractual claims, claiming bad faith in delaying
10 payments on policies when they knew these were policy limits
11 losses, in the insured's view, dribbling payments out rather
12 than making them all promptly. And the underlying bad-faith
13 handling of the claims was a claim that was made in these
14 lawsuits. Also, prejudgment interest was sought. Why does
15 that matter? Because when the settlement agreements were
16 arrived at, they were not just for, as Mr. Beach would have it,
17 their expert, only for documented claims listed under the
18 insurance policies. That's the only thing Mr. Beach will tell
19 you -- and he's testified to this under oath -- that's the only
20 thing insurers will ever pay on. Well, that's just plain
21 wrong. We know it in a couple of ways.

22 The first way we know it for sure is -- and this will
23 come out at trial -- a number of the insurers, for the reasons
24 that I just indicated, paid more than their policy limits,
25 more. So that proposition is put to rest. That's just not

D7fkwtc2

Opening - Mr. Williamson

1 possible, because they paid more than the policy limits. And
2 Mr. McKinley will explain, it just doesn't work that way.

3 And then, third, your Honor is going to be able to
4 examine all of the settlement agreements and see for yourself.
5 They don't say what Mr. Beach says. They say something very
6 different, not surprisingly. They say, we wanted all of the
7 claims that have been made yet or that could be made, either
8 under the policies or in lawsuits, to all be settled. We don't
9 want to be sued anymore, we don't want to have any claims from
10 you anymore, we want to buy peace. So, everything was covered,
11 and that includes the ones that I just alluded to earlier --

12 THE COURT: I understand people settle under a lease
13 that has boilerplate saying all claims made or which could be
14 made --

15 MR. WILLIAMSON: Yes.

16 THE COURT: -- so I understand your argument. There's
17 no need to make aspersions against your adversary. He made his
18 points, you make your points.

19 MR. WILLIAMSON: Yes, your Honor.

20 THE COURT: Your point is that the settlement covered
21 not only the claims that were codified but also other
22 categories of claims?

23 MR. WILLIAMSON: Yes. The "to be determined" and also
24 the extra-contractual, correct.

25 And it's a stipulated fact that there was no

D7fkwitc2

Opening - Mr. Williamson

1 agreed-upon allocations in any of these settlement agreements.

2 Now, Mr. Podesta argued that it would make -- I think
3 his words were it would make 4545 a dead letter if your Honor,
4 were to say, well, just because there are no agreed-upon
5 allocations --

6 THE COURT: I really would like us to focus on opening
7 statements. It's not opening. We're talking about arguments,
8 many of which I've heard before. Let's focus on opening. Tell
9 me what the experts are going to say and how this ties into
10 this case. That's more interesting to me.

11 MR. WILLIAMSON: Yes, your Honor.

12 So, just on that point, we deal with that in our
13 brief. It involves collusive settlements.

14 With regard to --

15 THE COURT: Collusive settlements?

16 MR. WILLIAMSON: Collusive settlements. The cases
17 they're citing, that they say you should now ignore these
18 settlement agreements based upon, were cases in which the
19 courts were discussing collusive settlements. We discussed
20 that in our pretrial brief. They don't apply, but it was
21 raised today, to argue that 4545 would become a dead letter. I
22 was just alerting your Honor that we deal with that in the
23 pretrial brief.

24 THE COURT: I'm alerted. Thank you very much.

25 MR. WILLIAMSON: Thank you.

D7fkwtc2

Opening - Mr. Williamson

1 OK, now, to complete the history here, with regard to
2 7 World Trade Center, the evidence will show that they
3 commenced a lawsuit and they had to sue IRI, their carrier.
4 There are two lessons that emerge from that lawsuit which
5 inform this analysis at this trial. One is that one of the big
6 issues that related to the claim, the gravamen of which was bad
7 faith, was that IRI was going to deduct from one category of
8 insurance coverage payments that had been made for a different
9 category of insurance coverage. And that was part of the
10 lawsuit, and it was settled. And in the settlement IRI had to
11 agree in a written stipulation of settlement filed in this
12 court that that wasn't proper and the amounts had to be put
13 back into the correct categories.

14 THE COURT: I don't remember that.

15 MR. WILLIAMSON: I'm sorry?

16 THE COURT: I don't remember that.

17 MR. WILLIAMSON: No, it was not before your Honor.
18 But the stipulation was filed in December 2003, and we can
19 provide it to you. And --

20 THE COURT: What do I learn from this?

21 MR. WILLIAMSON: What you learn from it is that you
22 can't -- they're not fungible. That's the point of Oden.

23 THE COURT: What's not fungible?

24 MR. WILLIAMSON: Insurance recoveries. You can't just
25 say, OK, I'm IRI and I received a claim from you for property

D7fkwitc2

Opening - Mr. Williamson

1 damage but I want to subtract from that claim because I don't
2 want to pay you that much, I'm going to subtract some money
3 that I paid you on your lost rental income claim, just switch
4 it. That is exactly what Oden says you can't do. It's not
5 fungible. You can't just move it around to reach your desired
6 results.

7 And let's take a look at the final internal IRI loss
8 handling instructions. You learn from that that -- well, a
9 couple of things. The first thing you'll learn, we all learn,
10 is that, yes, of course you can break insurance payments, as
11 your Honor has held, into different categories of coverage.
12 And this is the IRI final internal document -- not ours,
13 theirs -- for their loss handling instructions. And it says,
14 after final payment, please allocate to, and then you have the
15 \$586,223,141.32. And this becomes very important later for the
16 property damage claims to the property damage coverage. And
17 this sets up a ratio that we're going to talk about in a
18 minute. And the time element or lost rental income claims they
19 set 233 million for those. So, it can be done, IRI did it, and
20 it informs the process.

21 Now, a foundational point of departure for this
22 analysis is that we have to accept your Honor's rulings -- and
23 we do, for the purposes of this trial -- that under tort law
24 plaintiffs will be precluded from recovering replacement cost
25 damages.

D7fkwitc2

Opening - Mr. Williamson

1 Your Honor has held --

2 THE COURT: I remember.

3 MR. WILLIAMSON: OK. That was in September.

4 And then with regard to 7 World Trade Center, in
5 December of last year, you had a similar holding, both times
6 acknowledging that you had ruled that plaintiffs cannot recover
7 in tort for their replacement costs.

8 The second point is also missing --

9 THE COURT: Because it exceeded fair market value.

10 MR. WILLIAMSON: Yes.

11 And with respect to these holdings, Mr. Podesta was
12 referencing Fisher and saying, well, this case is just like
13 Fisher, exactly like Fisher. And that's argued in their
14 pretrial brief. But your Honor has rejected that and --

15 THE COURT: Please, opening, not legal argument.

16 MR. WILLIAMSON: Very well.

17 THE COURT: How many witnesses are you going to have,
18 Mr. Williamson? Tell me about that.

19 MR. WILLIAMSON: Yes. I mentioned Mr. McKinley, who
20 will be our first witness. And we have explained off the
21 record the situation with regard to Mr. Beach -- I'm sorry,
22 Mr. Reilly, I misspoke. I don't know if you want me to go into
23 that on the record?

24 THE COURT: No, I do not.

25 MR. WILLIAMSON: Yes, OK. So then we also will have

D7fkwitc2

Opening - Mr. Williamson

1 Professor Shavell. And I can move now to the next point.

2 We submit at the end of the evidence that when the
3 standards are proof required are enforced, the aviation
4 defendants will not meet them.

5 With regard to the conclusion that's advocated here,
6 it's very revealing that years ago our expert, Professor Steven
7 Shavell, indicated in his analysis for your Honor's
8 consideration that if your Honor found that there should be
9 some allocation, even though we believe none has been proven
10 and he argues that there should be none in his expert view from
11 an economist's standpoint, nevertheless, if you wanted to
12 create one, you could do it by setting up a ratio in regard to
13 the claims that were filed. And your Honor discussed this in
14 the June of last year oral argument, and you discussed it in
15 your decisions.

16 Now, for the first time, the aviation defendants, by
17 the way, offered no allocation, none --

18 THE COURT: Can we not please make rebuttals. This is
19 not the time for that. You'll have a closing argument.

20 MR. WILLIAMSON: Yes, your Honor.

21 Can I just point out that the turnabout on this
22 issue --

23 THE COURT: No.

24 MR. WILLIAMSON: -- just quickly?

25 THE COURT: I think you've told me all that you're

D7fkwitc2

Opening - Mr. Williamson

1 going to tell me. You told me that McKinley is going to talk
2 about the insurance, that Shavell is going to talk about the
3 economics. All right, let's get the witnesses going.

4 MR. WILLIAMSON: OK.

5 So, in conclusion, on the correspondence question:
6 We've tried to distill the analytics down to this -- that if we
7 take the recoveries from the insurers, divide them, as your
8 Honor has, into the two major categories which your Honor has
9 said exist, Professor Shavell has said exist, then we find that
10 if we match them up with what could be a potential tort
11 recovery and what can't, the conclusion inescapably is no
12 correspondence on replacement costs, possible correspondence on
13 lost rental income. If your Honor finds that they have met
14 their burden of proof and if your Honor elects to use Professor
15 Shavell's approach, which now the aviation defendants have
16 adopted as a possible, in fact the best, method of allocation
17 or most practicable, they say --

18 THE COURT: Let me understand this chart.

19 MR. WILLIAMSON: Yes, your Honor.

20 THE COURT: WTCP's recoveries from insurers?

21 MR. WILLIAMSON: Yes.

22 THE COURT: And then you said property damage?

23 MR. WILLIAMSON: Yes.

24 THE COURT: But that wasn't the insuring agreement,
25 was it?

D7fkwitc2

Opening - Mr. Williamson

1 MR. WILLIAMSON: Yes, replacement costs.

2 THE COURT: OK, but not property damage. How much it
3 would cost to replace the property?

4 MR. WILLIAMSON: Right.

5 THE COURT: So, why do you write no correspondence
6 between property damage and replacement costs?

7 MR. WILLIAMSON: Because your Honor has said, looking
8 at the left-hand --

9 THE COURT: So this is a depiction of what I said?

10 MR. WILLIAMSON: Yes, that's the belief, yes, your
11 Honor.

12 THE COURT: I think I'd rather use my words than --

13 MR. WILLIAMSON: Of course. It's just an attempt to
14 provide graphic analytics.

15 THE COURT: Mr. Williamson, it's not of any use.

16 MR. WILLIAMSON: Very well.

17 Thank you, your Honor.

18 THE COURT: OK, you're welcome.

19 First witness?

20 MS. TAYLOR: Your Honor, Ann Taylor for Globe. I have
21 the honor of calling the aviation defendants' first witness,
22 Mr. Michael Beach.

23 THE COURT: Is there an agreement that the experts
24 remain in the courtroom or must they be invited out?

25 MR. PODESTA: I have no objection to their witnesses

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Opening - Mr. Williamson

1 staying, as long as it's on a reciprocal basis.

2 THE COURT: It's on reciprocal?

3 MR. WILLIAMSON: Yes, your Honor.

4 THE COURT: The witnesses can stay.

5 I appreciate attention to the oath while it's given,
6 no notes, no shuffling of papers.

7 MICHAEL S. BEACH,

8 called as a witness by the Defendants,

9 having been duly sworn, testified as follows:

10 THE COURT: Try to talk loudly, give the reporter your
11 full name, and spell it.

12 THE WITNESS: Yes. It's Michael S. Beach, B-e-a-c-h.

13 THE COURT: You may inquire, Ms. Taylor.

14 DIRECT EXAMINATION

15 BY MS. TAYLOR:

16 Q. Good morning, Mr. Beach. Are you currently employed?

17 A. I am I am employed with McLarens Global Claims Services as
18 an executive general adjuster and a vice president.

19 THE COURT: Spell the name, please.

20 THE WITNESS: It's McLarens, M-c-L-a-r-e-n-s.

21 Q. And what is McLarens Global Claims Services?

22 A. We are the largest independently owned independent
23 adjusting firm in the world. We have some 300 offices in 80
24 countries. We have a diverse portfolio of clientele and are
25 considered lead adjusters in the global world.

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Beach - direct

1 Q. Can you briefly describe for us what an adjuster does?

2 A. Yes. The primary function of an adjuster is to evaluate
3 losses and to make recommendations to their insurers.

4 Q. For how long have you worked as an adjuster, Mr. Beach?

5 A. It's been 25 years now.

6 Q. Do you consider yourself an expert in any particular area?

7 A. Yes. I would say I'm an expert in the handling of claims,
8 making recommendations to insurers, primarily focusing on
9 property claims.

10 Q. And what is involved in adjusting property losses?

11 A. You're generally going to evaluate the losses that are
12 presented and you're going to review policy coverages, work
13 with consultants, and ultimately make recommendations to the
14 insurers.

15 Q. I'm sure you've handled many accounts in 25 years, but as
16 examples, could you identify some significant accounts you
17 currently handle?

18 A. Yes. I am what they call an account adjuster. I handle
19 claims for Cole Holdings -- they're one of the largest real
20 estate investment trust companies in the world -- I handle
21 claims for Compass Group -- which is, I believe, the fourth
22 largest employer in the world handling food service -- I work
23 for the Chicago Public School District insurers -- which is one
24 of the largest school districts in the country -- I also
25 assisted in handling claims for Federal Express, General

D7fkwitc2

Beach - direct

1 Electric, and other property management companies, similar to
2 World Trade Center, such as C.B. Richard Ellis, Grubb & Ellis.

3 Q. Have you had experience addressing damages claims arising
4 out of natural disasters?

5 A. I have. Over the years I've handled claims as a result of
6 earthquakes, floods, several hurricanes, storm losses. In
7 fact, I'm currently handling a claim here on the East Coast as
8 a result of Superstorm Sandy which involved some 950 locations
9 for one insured.

10 Q. Have you also had experience in adjusting losses from
11 international events?

12 A. Yes. As a result of the invasion of Iraq into Kuwait and
13 following Desert Storm, I was involved handing claims
14 assessing for the royal family for some six weeks in the early
15 1990s.

16 Q. What was the purpose of the adjustment of those property
17 claims in Kuwait?

18 A. Obviously there was substantial damage due to the war, and
19 we were brought in to assess the damages sustained by the royal
20 family property owners in the country. Those claims would then
21 be certified by the United Nations in attempting to recover
22 funds from the country of Iraq.

23 Q. Mr. Beach, here in this matter what were you retained to do
24 for the aviation defendants?

25 A. In this case, I was asked to provide expert analysis and

D7fkwtc2

Beach - direct

1 testimony regarding the insurance claims that were asserted by
2 WTCP on both the complex claim and the World Trade Center 7
3 case as it relates to those claims asserted to the insurers.

4 Q. And did you issue any expert reports?

5 A. I did. I issued one expert report on the complex claim,
6 and I issued a report on World Trade Center 7, which I had
7 supplemented twice.

8 Q. Let me have Mr. Byrnes hand you what has been marked
9 Defendants' Exhibit A --

10 THE COURT: I'd rather take the testimony orally.
11 There's no need to introduce the reports. Cover what you want
12 to cover.

13 MS. TAYLOR: Your Honor, we would tender Mr. Beach as
14 an expert on the insurance issues presented in this case.

15 THE COURT: Is there any objection, Mr. Williamson,
16 Ms. Baglin?

17 THE WITNESS: Your Honor, I'm going to be
18 cross-examining Mr. Beach. We have no objection as long as
19 he's being offered as an adjuster. That was what his reports
20 say, that's what his testimony was. It's not clear --
21 Mr. Beach just said he was retained to --

22 THE COURT: Do you object, Ms. Baglin?

23 MS. BAGLIN: To anything beyond --

24 THE COURT: Overruled. Proceed please. No speeches,
25 please. If you object, the word is "objection," period.

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Beach - direct

1 Go ahead, Ms. Taylor.

2 MS. TAYLOR: Thank you, your Honor.

3 BY MS. TAYLOR:

4 Q. Mr. Beach, could you describe the type of coverage World
5 Trade Center Properties had for the complex at the time of the
6 loss?

7 A. Yes. They acquired insurance, which primarily covered the
8 value of the buildings, the property damage, as well as any
9 losses that may occur as a result of damage to those buildings
10 in the form of business interruption or rental income losses.

11 Q. Did World Trade Center Properties operate the complex as an
12 income-producing property?

13 A. That is my understanding, yes.

14 Q. And are you familiar with the scope of property insurance
15 coverage that companies which manage high-rise office buildings
16 obtain?

17 A. It would be common to obtain coverage for both property
18 damage and business income losses.

19 Q. And how are you familiar with that type of coverage?

20 A. Well, I have worked for insurers on similar properties, as
21 I mentioned C.B. Richard Ellis and Grubb & Ellis, which are
22 similar large real estate management companies.

23 Q. Why do companies that manage high-rise office buildings
24 obtain both property damage and business interruption coverage?

25 A. Well, the coverages, as we briefly heard today, they work

D7fkwitc2

Beach - direct

1 together. There's property damage coverage and rental income
2 that both would respond in the event of destruction, such as
3 this case.

4 Q. And what does property damage coverage address?

5 A. Well, the property damage would respond to repair or
6 replace the buildings that were damaged. Once that coverage
7 responded, it would enable the policyholder or the owner to
8 restore their income stream as a result of the building being
9 completed.

10 Q. And what does business interruption coverage pertain to?

11 A. That would be the coverage for their loss of revenues or
12 rental value less any noncontinuing expenses that would have
13 been incurred during that period of restitution, from the date
14 of the loss until those buildings were restored.

15 Q. Why is business interruption coverage limited to the time
16 that it takes to repair or rebuild the building?

17 A. Once again, the business interruption coverage covers that
18 period of time from the date of the loss until the buildings
19 are restored. As mentioned, once the building is restored,
20 their revenue streams would be returned and they could retenant
21 those buildings; therefore, it's limited to the period of
22 repair or recovery.

23 Q. Mr. Beach, could World Trade Center Properties have
24 asserted a business interruption claim without having physical
25 damage to the property?

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Beach - direct

1 A. No. The policy requires there be physical loss or damage
2 to the building.

3 Q. Now, we've been talking about two types of coverages here,
4 property damage and business interruption. From an insurance
5 perspective, did World Trade Center Properties incur two losses
6 here, one for property damage and one for business
7 interruption?

8 A. No, it's my opinion there was one loss as a result of the
9 terrorist attacks. However, the policies did respond to two
10 separate coverages, those being property damage and business --

11 THE COURT: Is there a difference between how many
12 losses and how many categories of losses?

13 THE WITNESS: Well, I consider it one loss. The --
14 this was something that was litigated and I believe --

15 THE COURT: One occurrence?

16 THE WITNESS: I call it -- in the insurance world,
17 it's one loss event. And I know the Court's ruled some
18 policies had responded on a two-occurrence basis.

19 THE COURT: That's because there were two airplanes
20 and two buildings and it depended on the definition, but do we
21 generally concern ourselves with how many losses -- we talk
22 about loss events, not losses?

23 THE WITNESS: Well, yeah, in simplified terms, I would
24 consider it one loss to which I would have one insurance file,
25 one claim file; two coverages distinctly being property damage

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Beach - direct

1 and rental income, but, again, one loss event, is my opinion.

2 THE COURT: Go ahead.

3 BY MS. TAYLOR:

4 Q. Mr. Beach, could you estimate the amount of records you
5 reviewed in connection with your analysis of the insurance
6 adjustment process for the loss associated with the complex?

7 A. There were several thousand pages of materials that I
8 reviewed, multiple documents.

9 Q. Let me hand you what has been marked as -- or have Mr.
10 Byrnes hand you what's been marked as Defendants' Exhibit A-4.

11 MR. BYRNES: May I, your Honor?

12 THE COURT: Yes. Are we going to use the screens?

13 MS. TAYLOR: Yes.

14 THE COURT: So why do we need to work with paper?

15 MS. TAYLOR: I thought it might be beneficial for
16 Mr. Beach to have the exhibit in front of him.

17 THE COURT: OK. He has a screen.

18 MR. BYRNES: Would you like a paper copy or will you
19 be using the screen?

20 THE COURT: I have one.

21 MR. BYRNES: Yes, you do, your Honor.

22 THE COURT: Please proceed. Put it up on the screen.

23 There's not going to be an objection, is there,
24 Mr. Williamson or Ms. Baglin?

25 MS. BAGLIN: Your Honor, this is a document that has

D7fkwitc2

Beach - direct

1 been created for the litigation. We will hear what the witness
2 is going to say about it. We just were given it today for the
3 first time. This was not a document that was ever produced
4 before --

5 THE COURT: Do you object?

6 MS. BAGLIN: It does not appear objectionable on its
7 face. I'm not sure how it's going to be used, your Honor.

8 THE COURT: Go ahead, please, Ms. Taylor.

9 MS. TAYLOR: Your Honor, just to that point: This was
10 an exhibit to Mr. Beach's expert report which was served in
11 July of 2011.

12 BY MS. TAYLOR:

13 Q. Mr. Beach, did you create this document?

14 A. Yes, I did.

15 Q. What records did you review specifically to create this
16 exhibit?

17 A. This document is labeled a summary of the proofs of loss.
18 So, the documents I relied upon would have been the proofs of
19 loss submitted by World Trade Center, the documents that were
20 submitted in support of those proofs of loss, including the
21 business income analysis as well as the property damage
22 analysis that was put forward by their expert, that being
23 Cambridge Horizon and --

24 THE COURT: So this is a summary of various documents
25 that were submitted by the insured to the insurer?

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Beach - direct

1 THE WITNESS: That is correct, yes.

2 THE COURT: Is there an objection?

3 MS. BAGLIN: Not based on the titles across the
4 headings, no. We agree that --

5 THE COURT: Ms. Baglin, please, this is not a
6 deposition. Do you object? You've seen the document, you
7 reviewed the document. Is it a fair summary?

8 MS. BAGLIN: It appears to be a fair summary, your
9 Honor.

10 THE COURT: This a fair summary of the documents that
11 are referenced on this summary?

12 THE WITNESS: Yes. In fact, we previously reviewed
13 some of those today.

14 THE COURT: Objection overruled.

15 MS. TAYLOR: Your Honor, we would like to hand
16 Mr. Beach the proofs of loss that form the basis of his
17 exhibit, which is Defendants' Exhibit A-4, to lay the
18 foundation to get the proofs of loss into evidence.

19 THE COURT: That's not how you're going to get it into
20 evidence. You can't use a summary as the basis for introducing
21 that which is summarized. That's circular.

22 MS. TAYLOR: Your Honor, we would like to hand the
23 witness the actual proofs of loss.

24 THE COURT: Are you going to use it for any other
25 purpose than to establish these values?

D7fkwitc2

Beach - direct

1 MS. TAYLOR: The proofs of loss in themselves are --
2 they establish the values that are on the charts. The proofs
3 of loss are the actual individual evidence.

4 THE COURT: This is a summary?

5 MS. TAYLOR: This is a summary.

6 THE COURT: So, the use of a summary is to make
7 unnecessary the constituents of the summary. Why complicate
8 things? When it comes to be necessary, you can do it, but
9 don't do it until it's necessary.

10 Q. Mr. Beach, I notice on your summary --

11 THE COURT: I think it should be a required course,
12 for all commercial lawyers to be a public defender for a year,
13 learn how to try cases. It's so different from depositions.

14 Please proceed.

15 BY MS. TAYLOR:

16 Q. Now, I notice on Defendants' Exhibit A-4, a title a column
17 that's indicated titled "Title/Coverage." And I note certain
18 items in there are in quotes and some are in parentheses. What
19 does this denote?

20 A. Yes, those items which are in quotations, which were
21 inserted by me, designate the method in which those proofs of
22 loss were submitted and how they were titled by WTCP. We will
23 see, of course, under proof of loss number 2, in their
24 supplements, they did not title those proofs of loss. What I
25 have done is identified what those proofs of loss represented

D7fkwtc2

Beach - direct

1 and those were in parentheses, the three larger numbers
2 appearing under building and loss claim.

3 Q. And Mr. Beach, certain of the items are titled in quotes
4 "Business Income Only" and certain are titled "Rental
5 Value/Business Income Only."

6 Is there any basis in the proofs that is different
7 between those two titles that World Trade Center Properties
8 used?

9 A. No. At some point in time they, WTC, had changed the
10 wording on the proofs, but, no, essentially they are the same
11 and the method in which the crimes were put forth are the same.

12 Q. In your review of the proofs of loss, did you form any
13 opinions about what claims World Trade Center Properties
14 submitted?

15 A. Yes. They had asserted claims for business income or
16 rental value and business income, as was stated. They also
17 asserted claims for property damage on both an actual cash
18 value and a replacement cost basis.

19 Q. At some point did World Trade Center Properties also submit
20 things to the insurers identified as TBD, or to be determined?

21 A. Yes. There was a very large claim presentation that was
22 put forward which Cambridge Horizon. They're a consultant --
23 that being World Trade Center's -- and several items were put
24 forth in that presentation as to be determined.

25 THE COURT: In addition to what you have here?

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Beach - direct

1 THE WITNESS: That is correct. The values as TBD were
2 never presented and claimed or valued, so they would not be
3 included on this from a value standpoint.

4 Q. Mr. Beach, does listing an item as TBD suffice in
5 presenting a claim to an insurer?

6 A. No. It would suggest to me that they may have an intent to
7 file a claim but that would not be asserting a claim.

8 Q. Could you describe for us proof of loss number 2?

9 A. Yes. Proof of loss number 2 was submitted or dated
10 November 7th of 2001, the value is \$3,471,800,000, and WTC was
11 asserting a claim for the actual cash value of the building on
12 a one-occurrence basis. And that value, you may note, was
13 \$75 million less than their policy limits, as they had already
14 received payment of \$75 million.

15 Q. And was that --

16 THE COURT: Can I just understand: ACV means actual
17 cash value? Is that what ACV means?

18 THE WITNESS: Correct, actual cash value.

19 THE COURT: Exceeds occurrence limit?

20 THE WITNESS: Yes. It was suggested in the proof of
21 loss that their -- the value of their building on an ACV basis
22 would exceed their limit of insurance, which was
23 \$3,546,000,000. They have essentially asked that insurers pay
24 policy limits less what was previously advanced when paid.

25 THE COURT: And the number 3,471,000,000, is that your

D7fkwitc2

Beach - direct

1 number or their number?

2 THE WITNESS: No, that was -- all of these numbers
3 were those submitted by WTCP in the forms of proofs of loss.
4 Yes, that was essentially their policy limit value, 3.5 million
5 minus a \$75 million payment that had been advanced in response
6 to proof of loss number 1.

7 THE COURT: So, is this \$3,471,000,000 the asserted
8 actual cash value?

9 THE WITNESS: It was presented as an actual cash
10 value, yes, that their claim exceeded the policy limits on an
11 actual cash value, is what they were asserting.

12 THE COURT: So, the 3,471,000,000 was the remainder
13 after a partial payment?

14 THE WITNESS: That is correct, yes.

15 THE COURT: The partial payment was what?

16 THE WITNESS: \$75 million.

17 BY MS. TAYLOR:

18 Q. Mr. Beach, could you briefly describe for us the first
19 supplement to proof of loss number 2?

20 A. Yes. A few months later, on January 18th of 2002, the
21 first supplement to proof of loss number 2 was submitted. This
22 was submitted with a large claim binder that was prepared by
23 WTC's consultant, Cambridge Horizon. And within that proof of
24 loss and that claim summary they identified what they believed
25 to be the replacement cost value of the four structures as well

D7fkwitc2

Beach - direct

1 as the actual cash value.

2 In parentheses I have noted that the ACV value for the
3 four buildings was quantified at 6.497 billion and the
4 replacement cost at 7.183 billion. They also asserted that
5 they were requesting payment on the basis of there being a
6 two-occurrence limit, which would be the 3.546 plus an
7 additional 3.546.

8 THE COURT: Actually, if that offer of getting another
9 copy is still good, I'll take it.

10 Q. Mr. Beach, did World Trade Center Properties support the
11 first supplement to the proof of loss number 2 with any
12 supporting documentation?

13 A. Well, yes, the supporting documentation presented related
14 to the value of the buildings at replacement cost and actual
15 cash value. It was in excess of a 2,000-page document that was
16 prepared by Cambridge Horizon.

17 THE COURT: Tell me again. The \$7,183,000,000 figure,
18 was that claimed to be actual cash value or replacement cost?

19 THE WITNESS: No, if I could explain, they have valued
20 both of those numbers in their presentation. The 7 billion
21 number being the replacement cost, and the 6.497 being their
22 actual cash value. So, they're just showing the difference
23 there.

24 THE COURT: Give me a moment, please.

25 Thank you. Proceed.

D7fkwitc2

Beach - direct

1 BY MS. TAYLOR:

2 Q. Mr. Beach, is what is on the screen, Joint Exhibit No. 5, a
3 copy of the Cambridge Horizon report you just testified to that
4 was submitted as documentation with first supplement to proof
5 of loss number 2?

6 A. Yes. As you will see, this document is dated January 8th,
7 which is the date shown as their first supplement, and it is
8 titled their partial claim summary and supporting
9 documentation, which if you turn to the next few pages, it will
10 show where those values of that we're referencing of
11 7.183 billion or replacement costs and 6.497 as ACV. Those
12 numbers shown by each of the four buildings, Trade Centers, 1,
13 2, 4 and 5.

14 Q. Mr. Beach, can you provide us a general understanding
15 within the insurance industry of the difference between
16 replacement cost value and actual cash value, as it relates
17 here?

18 A. Yes. Replacement cost is the amount or cost that it would
19 be to replace the damaged buildings, the four destroyed
20 buildings, with new buildings, new materials, essentially as
21 they existed prior to the loss. The actual cash value, on the
22 other hand, would be derived by using the replacement cost
23 value and deducting depreciation to a value but not less than
24 the market value.

25 Q. Is there a name in the insurance industry that is referred

D7fkwtc2

Beach - direct

1 to concerning the difference between the actual cash value and
2 replacement cost value figures?

3 A. Yes. The difference between these two values is commonly
4 known as the depreciation holdback.

5 Q. For a policy that responds to a loss on a replacement cost
6 value, does the insured get the agreed replacement cost value
7 immediately?

8 A. No. They would be entitled to receive the agreed actual
9 cash value. Once they had presented documentation supporting
10 that they had rebuilt the structures to a value in excess of
11 the actual cash value, they would then be entitled to recover
12 the difference or what I have termed as the depreciation
13 holdback.

14 Q. When a destroyed property is being rebuilt, is there any
15 conceptual difference between money paid on actual cash value
16 or money paid on replacement cost value?

17 A. No. In the event where a building is being reconstructed,
18 whether the term is ACV or depreciation holdback, they would
19 all be considered one and the same. The monies being funded
20 are to rebuild the structural.

21 THE COURT: So, let me understand. The actual cash
22 value, as you calculated, is that which is the reasonable cost
23 of restoring the building as it was a moment before the
24 catastrophe less accumulated depreciation?

25 THE WITNESS: Well, yeah, let me clarify. These

D7fkwitc2

Beach - direct

1 values weren't prepared by myself. These are those which were
2 submitted by World Trade Center, but, yes --

3 THE COURT: I know you didn't vouch for the values,
4 but as you understand the terminology, it was the claim of the
5 insured for the actual cash value of the property measured by
6 how much it would cost to replace the building as the building
7 stood a moment before the catastrophe less accumulated
8 depreciation?

9 THE WITNESS: Yes. But let me just clarify: Yes, the
10 replacement cost to replace what existed just prior to the
11 loss, with new materials of course, and then based upon that
12 condition of that value prior to the loss, they would applied
13 depreciation, and that's what I call the depreciation holdback.
14 So, yes, that would be the depreciated value due to their age,
15 condition and other factors, again, as calculated by their
16 consultants here.

17 THE COURT: Now, the buildings had just been acquired
18 by the insured. The leasehold at least had just been acquired
19 by the insured.

20 Is depreciation measured by the time from acquisition
21 or the time from original construction?

22 THE WITNESS: Well, it would be measured at the time
23 of the loss event. So, when we're creating a replacement cost
24 value, whoever that may be is replacing as it existed on
25 September 10th with new buildings --

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Beach - direct

1 THE COURT: 2001?

2 THE WITNESS: 2001.

3 -- and at that time what was the condition of the
4 building at that time. And based upon those various factors --
5 age, condition, was it properly maintained, well maintained --
6 that's the method you would use in applying depreciation.

7 THE COURT: The holdback or deduction that you're
8 talking about is depreciation. So I'm asking if the
9 depreciation is measured from a period of time from the
10 creation of the building or from the acquisition of the
11 insured's lease?

12 THE WITNESS: It would be at the time it existed as of
13 9/11.

14 THE COURT: Depreciation is an accumulation. My
15 question to you is: What is the period of accumulation?

16 If you don't know, say you don't know.

17 THE WITNESS: I'm not sure I do. I can only expand,
18 that if the building --

19 THE COURT: If you don't know, don't expand.

20 THE WITNESS: OK --

21 THE COURT: Expansion on lack of knowledge is just a
22 larger lack of knowledge.

23 THE WITNESS: I think I can help explain that in
24 measuring it, but from a time period, no, from the --

25 THE COURT: Am I to understand this that when it's

D7fkwitc2

Beach - direct

1 submitted, you're getting a figure for cash value from the
2 insured and you're getting a figure for replacement cost to the
3 insured, and the difference is supposed to be depreciation, but
4 the period of time that the depreciation has accumulated is an
5 important factor?

6 THE WITNESS: Sure. As an example, if the building
7 was 70 years old, as opposed to two years old at the time of
8 the loss, the depreciation values would be substantially
9 different.

10 THE COURT: How old were the buildings in 2001?

11 THE WITNESS: I don't know the exact --

12 THE COURT: Approximately.

13 THE WITNESS: 20 years old, 30 years old. I don't
14 recall exactly, but --

15 THE COURT: And, generally speaking, depreciation
16 varies for tax purposes, for economic purposes, for insurance
17 purposes. How do you measure depreciation?

18 THE WITNESS: Again, it's measured based upon the
19 condition of the building -- was it well maintained, was it a
20 newer building, was it well kept. If it was falling apart,
21 more depreciation would apply. Had it been a well maintained
22 building, less depreciation would have been applied.

23 THE COURT: So, it's really a figure of appraisal
24 rather than an economic measure?

25 THE WITNESS: Yeah, I would agree --

D7fkwitc2

Beach - direct

1 THE COURT: Or accounting measure, it's not an
2 accounting measure, it's an appraisal measure?

3 THE WITNESS: I would agree. Experts would determine
4 what condition it was and apply depreciation on that factor.

5 THE COURT: That will be the measure of depreciation?

6 THE WITNESS: Correct.

7 THE COURT: So, in effect, WTCP is telling you,
8 because there's not too much difference between actual cash
9 value and replacement value, that this was a spic-and-span
10 building?

11 THE WITNESS: Well, yes, that would appear to be the
12 case. I'm not saying that's what the insurers had valued it
13 at, but, yes, that's what they put forward here.

14 THE COURT: This is a factor of about 12 percent?

15 THE WITNESS: Yes.

16 THE COURT: And the replacement materials are
17 generally much more expensive than they were at the time the
18 building was created?

19 THE WITNESS: That would be true, yes.

20 THE COURT: So, there might be a little bit of an
21 element of puff in these numbers?

22 THE WITNESS: Well, I'm not an expert necessarily in
23 that field but -- but it would suggest, yes --

24 THE COURT: You're a tough insurance adjuster.

25 THE WITNESS: It suggests that very little

D7fkwitc2

Beach - direct

1 depreciation was applied in this presentation, yes, I would
2 agree.

3 THE COURT: OK, gotcha.

4 Ms. Taylor.

5 BY MS. TAYLOR:

6 Q. And, Mr. Beach, did World Trade Center Properties, through
7 the first supplement to its proof of loss number 2, and the
8 supporting materials that you have in front of you, the
9 Cambridge report, did they seek actual cash value and
10 replacement cost value from their insurers?

11 A. Yes, they did.

12 THE COURT: Not both, it can't be both.

13 THE WITNESS: They asserted those values but were
14 seeking payment, of course, for one value, not both of those
15 values combined.

16 THE COURT: I think I got the picture. Can we move on
17 to another document or do you still have more to go with A-4?

18 MS. TAYLOR: No more on -- if you could turn the page.

19 THE COURT: On this document?

20 MS. TAYLOR: Yes.

21 THE COURT: So what you're looking for are the
22 components of the claim?

23 MS. TAYLOR: Yes.

24 BY MS. TAYLOR:

25 Q. Mr. Beach, you testified earlier about some items that were

D7fkwitc2

Beach - direct

1 TBD. Are these the items that World Trade Center Properties
2 put forward to its insurers as TBD or to be determined?

3 A. Yes. Page 1, that we previously reviewed, addressed
4 strictly the building. Pages 2, 3 and 4, if you scroll down,
5 list a number of items that were identified as TBD, or to be
6 determined.

7 Q. Did World Trade Center Properties ever document or quantify
8 these claims, Mr. Beach?

9 A. They did not, no.

10 Q. Mr. Beach, in your review of the materials, did you come to
11 understand that an appraisal process took place between World
12 Trade Center Properties and certain of its insurers?

13 A. Yes. There was an extensive appraisal process that was
14 undertaken. That is my understanding.

15 THE COURT: Keep that up for a minute.

16 MS. TAYLOR: May I proceed?

17 THE COURT: Yes.

18 BY MS. TAYLOR:

19 Q. Mr. Beach, we're going to put up on the screen Defendants'
20 Joint Exhibit 94.

21 Did you review this document as part of your analysis
22 of the claim adjustment process?

23 A. I did. It is a stipulation and order regarding the
24 appraisal process between World Trade Center and the appraising
25 insurers.

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Beach - direct

1 Q. And what was being appraised here?

2 A. As shown on pages 2 and 3 of this order, there were three
3 items that were being appraised, that being a replacement cost
4 value of the destroyed World Trade Center complex buildings,
5 their actual cash value, as well as the rental value loss.

6 Q. Was there any indication in any of the records you reviewed
7 that WTCP submitted, or even tried to document, any claims
8 other than the value of the destroyed complex on an actual cash
9 value and replacement cost value or its resulting loss of
10 rental income?

11 THE COURT: Change the question. You've got too much
12 in there.

13 Q. Mr. Beach, what elements did World Trade Center Properties
14 put forward in its claim to its insurers?

15 THE COURT: That begs the question. You've got the
16 TBD items, so why don't you limit it to what they documented.

17 And I understand whatever documentation they had was
18 only for replacement costs and actual cash value, right?

19 THE WITNESS: That is correct.

20 THE COURT: OK, so that's the issue. Can we go on.

21 BY MS. TAYLOR:

22 Q. Mr. Beach, did WTCP also document its loss of income as a
23 result of the destroyed buildings?

24 A. Yes, they did. In the previous exhibit that we were
25 reviewing, A-4, they did put forth 13 separate proofs of loss,

D7fkwtc2

Beach - direct

1 totaling a value of \$1.34 billion.

2 Q. Do you have an opinion on what claim elements World Trade
3 Center Properties insurers issued payments on concerning the
4 complex?

5 THE COURT: Let's start with the payments that were
6 issued and then come in to the opinion. Lay a foundation.

7 Did there come a time when the insured was paid?

8 THE WITNESS: Yes, there was.

9 THE COURT: Start from that and keep going.

10 BY MS. TAYLOR:

11 Q. Mr. Beach, we've put up what has been marked as Defendants'
12 Exhibit B-4. What is this document?

13 A. This is a summary of the insurance program identifying the
14 insurance companies that participated in the program, the total
15 exposure that was determined, which was driven by the court
16 rulings, whether they would be responding on a one- or
17 two-occurrence basis. It also identifies payments which were
18 made through the claims process prior to any settlement
19 agreements, and it also identifies the amount of claims paid as
20 a result of the settlement agreements.

21 THE COURT: Let me just add something to the record,
22 which I think is undisputed: There was litigation between the
23 insured and the set of approximately 20 insurers that made up
24 the insurance program, as to whether or not there was one
25 occurrence or two occurrences. The insured took the position

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Beach - direct

1 that there were two occurrences because there were two
2 airplanes and two collisions, and that added to the insurance
3 amounts mentioned by the ceilings in each insuring agreement.
4 Various of the insurers had different clauses.

5 The case came before Judge Martin. It was finished by
6 Judge Mukasey. There was an appeal to the Court of Appeals.
7 In some of the policies there were two-occurrence payments,
8 there were payments based on the basis of two occurrences; in
9 some of the policies there was one occurrence; and then there
10 was a settlement that I think embraced all of them or some of
11 them, I don't know.

12 Am I right so far, Ms. Taylor?

13 MS. TAYLOR: Yes, until you got to the settlement
14 part. I'm not quite sure what the Court meant by that.

15 THE COURT: Mr. Williamson, am I right so far?

16 MR. WILLIAMSON: I thought so, your Honor.

17 THE COURT: You know better than any of us, so tell
18 us.

19 THE WITNESS: Yes, certain policy forms, through the
20 Court's rulings, ruled that they must respond on a
21 one-occurrence basis. That would be a large percentage of
22 insurers that prescribed to the Wilprop form.

23 Other insurers, that followed forms other than the
24 Wilprop form, were required to respond on a two-occurrence
25 basis. So, looking at the total exposure column, the total

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Beach - direct

1 available exposure was 4,678,000,000, and comparing that to the
2 policy limit, the one-occurrence policy limit is
3 \$3.546 billion. So, there was additional insurance monies as a
4 result of that ruling on a two-occurrence for certain insurers.

5 BY MS. TAYLOR:

6 Q. And Mr. Beach, did certain of the insurers pay --

7 THE COURT: Excuse me. I see the \$4.6 billion column
8 on total exposure. What was the other number that you gave?

9 THE WITNESS: Well, the policy limit under a
10 one-occurrence exposure was \$3,546,000,000.

11 THE COURT: That's not shown on this chart?

12 THE WITNESS: That's not, no. This shows the total
13 combined of those responding on both 1 and 2. So, this was the
14 total available insurance exposure after the Court's ruling on
15 a one-occurrence versus two-occurrence basis.

16 MS. TAYLOR: Would your Honor like a hard copy of this
17 exhibit as well?

18 THE COURT: Yes, I would.

19 (Continued on next page)

D7FAWTC3ps

Beach - direct

1 Q. Mr. Beach, did the insurers make payments to World Trade
2 Center Properties following the loss?

3 A. Yes, they did.

4 Q. And did you review -- what materials did you review in
5 creating this chart?

6 A. The materials relied upon were various, but they include
7 settlement agreements of course that stated out the \$3.2
8 billion paid. They included charts that were provided as part
9 of my review that were created by WTCP. There was proof of
10 payment, such as checks, wire transfers. So I relied upon all
11 of that information in developing this summary of the total
12 exposure and what payments were made at what period of time.

13 THE COURT: Was this shown to the plaintiffs,
14 Ms. Taylor?

15 MS. TAYLOR: I gave it to them this morning. It is a
16 compilation of a couple of charts that Mr. Beach provided with
17 his expert report. But this is the first time we have set it
18 out in this fashion. We offered to exchange it with them on
19 Saturday, but they declined.

20 THE COURT: Why?

21 MS. BAGLIN: Your Honor, they had asked us, did we
22 wish to exchange demonstrative exhibits, but by that time it
23 was so late in the process, given the start time of the trial,
24 so we said let's just do it. So they gave it to us this
25 morning.

D7FAWTC3ps

Beach - direct

1 THE COURT: How do you know that this is correct?

2 MS. BAGLIN: Your Honor, there is one minor number
3 here that we take issue with. I can address it on
4 cross-examination of the witness.

5 THE COURT: No. Tell me now.

6 MS. BAGLIN: The royal indemnity specialty payment,
7 which is listed as \$216,100,000 -- it's the, I think, sixth
8 number from the end.

9 THE COURT: I see it.

10 MS. BAGLIN: That number includes the \$17.5 million
11 payment that came from the foreign parent that Mr. Williamson
12 mentioned in his opening. It's a payment that wasn't made
13 under any policy. It was made by an insurer. It was
14 considered part of the insurance payments. But it wasn't a
15 payment under any policy provisions.

16 THE COURT: Was it just a good-faith payment?

17 MS. BAGLIN: No. The foreign parent was sued because
18 I think there was some concern that perhaps the US subsidiary
19 that actually issued the insurance might be going out of
20 business. So there was a judgment against them already from
21 Judge Mukasey, and they brought an action.

22 THE COURT: Objection overruled. It's fair enough.
23 All right. So if that's the only issue, this document is
24 offered in evidence, is it not, Ms. Taylor?

25 MS. TAYLOR: Yes, it is, your Honor.

D7FAWTC3ps

Beach - direct

1 THE COURT: I accept it. It's admitted, D-2.

2 (Defendant's Exhibit D-2 received in evidence)

3 THE COURT: What were the payments before settlement,
4 Mr. Beach?

5 THE WITNESS: These were advance payments that were
6 issued in response to claims brought forward in their proofs of
7 loss. In fact, a couple of the insurers actually issued their
8 policy limits early on. Those are identified as Copenhagen Re
9 for \$4 million --

10 THE COURT: I don't need that.

11 THE WITNESS: OK. So anyway, these are claims that
12 were paid as part of the normal process of the claim adjustment
13 review and, again, preceded the final settlement agreements.

14 THE COURT: The final settlement agreement called for,
15 what? 4 billion 5 or 4 billion 1?

16 THE WITNESS: If I could just clarify, the settlement
17 agreements alone responded to the payments of \$3.27 billion, so
18 if you combine the 3.2 that related to the settlement
19 agreements, as well as the 1.3, the total payments issued under
20 the policy were \$4,581,000, which is about 97 million less than
21 the total exposure column. So I would be happy to further
22 clarify it for you if you want me to go through that a little
23 slower.

24 THE COURT: Let me see if I understand it. The total
25 exposure based on court rulings that the insured was entitled

D7FAWTC3ps

Beach - direct

1 to a one-occurrence or two-occurrence basis came to \$4.6
2 billion.

3 THE WITNESS: That is correct.

4 THE COURT: Against that, various insurers paid 1.3
5 billion prior to their -- prior to the parties' arriving a
6 settlement.

7 THE WITNESS: That is correct.

8 THE COURT: And following the settlement, another 3.2
9 billion was paid, making a total payment of \$4,581,794,675.

10 THE WITNESS: That is correct.

11 THE COURT: And explain the deduction of \$490 million.

12 THE WITNESS: Yes. There was a payment of 490 million
13 that was attributed to the Westfield retail property, which --

14 THE COURT: The Westfield was the lessor of all the
15 retail space in the World Trade Center. The World Trade Center
16 featured many, many stores on the first level and on a lower
17 level. And Westfield was the lessor of all that property. And
18 I think the history showed that Westfield was a lessee of the
19 WTCP companies, or affiliated companies, but for purposes of
20 insurance, their claim was broken out. So the WTCP parties
21 received \$4,581,794,675, and the Westfield interests received
22 \$490,430,635 -- is that correct?

23 THE WITNESS: That is correct, yes.

24 THE COURT: -- the two insurance payments together
25 coming to \$4,091,364,040. And that compares to approximately a

D7FAWTC3ps

Beach - direct

1 15 percent discount from the total exposure.

2 THE WITNESS: Correct. I just know the math. It's
3 about \$97 million less. But the total payment --

4 THE COURT: So it's less than that, right.

5 THE WITNESS: The total payments were approximately 97
6 million less than the available limits.

7 THE COURT: Right. OK. That's about a 4 percent, I
8 guess, difference.

9 THE WITNESS: I'm thinking a little smaller, but it
10 could be.

11 THE COURT: All right. Is this a good time to break
12 for lunch?

13 MS. TAYLOR: Certainly.

14 THE COURT: Or your adrenaline is so high that you
15 would like to keep up?

16 Let's come back about 2:15. Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: Mr. Beach, you should not be discussing
19 your testimony with anyone during the lunch break. Once you
20 start being a witness, no one should talk to you about this
21 case.

22 THE WITNESS: Fair enough.

23 THE COURT: Counsel, you understand?

24 MS. TAYLOR: Yes, your Honor, I understand.

25 (Luncheon recess)

D7FAWTC3ps

Beach - direct

A F T E R N O O N S E S S I O N

2:15 p.m.

THE COURT: Mr. Beach, I remind you that you remain under oath.

MICHAEL S. BEACH, Resumed.

THE COURT: Ms. Taylor?

MS. TAYLOR: Yes, your Honor.

THE COURT: Please continue.

DIRECT EXAMINATION (Cont'd)

BY MS. TAYLOR:

Q. Mr. Beach, World Trade Center Properties insurance considers the loss of the complex a policy limits loss?

A. Eventually they did, yes.

Q. If we could put up exhibit --

THE COURT: What is the policy limits loss?

THE WITNESS: Meaning a loss value that would exceed their policy of insurance limit. Their exposure.

MS. TAYLOR: Mr. Campbell, could you put up Joint Exhibit 95.

Q. Mr. Beach, you spoke earlier today about an appraisal process. Did the appraisal panel end up making a partial final determination of the replacement cost of the World Trade Center complex?

A. Yes, they did. As of December 31st, 2006, they had done so.

D7FAWTC3

Beach - direct

1 THE COURT: Who is "they"?

2 THE WITNESS: That would be the appraisal panel for
3 the insuring appraisers and WTCP complex.

4 Q. And, Mr. Beach, is the appraisal panel finding agreed
5 amount, then, for the World Trade Center Property and for the
6 insurers that took part in the appraisal process?

7 A. Yes. We previously discussed three categories to which
8 they were to determine a value on, and they had come to an
9 agreement on one of those being the replacement cost value of
10 the four World Trade Center Towers.

11 THE COURT: Who is the appraisal panel? How is it
12 constituted?

13 When you introduce a term that uninsured people like
14 me might not understand, it's a nice idea to define the term,
15 have the witness define the term, like "appraisal panel." How
16 do I know who the appraisal panel is, or how it's appointed, or
17 what it does?

18 THE WITNESS: In a situation where there is a
19 disagreement as to the value --

20 THE COURT: We're get --

21 THE WITNESS: I'm sorry.

22 THE COURT: We're getting some suggestion from
23 Ms. Taylor.

24 Q. Mr. Beach, would you describe what an appraisal is under an
25 insurance policy.

D7FAWTC3

Beach - direct

1 A. Yes. When there is a dispute as to values under the policy
2 contract, the parties can choose to have the matter appraised,
3 and in each instance, World Trade Center would assign an
4 appraiser, the insurers would assign an appraiser, and they
5 would each agreed upon an umpire in hopes of coming to
6 agreements on the three items we previously discussed --
7 replacement costs, actual cash value, and business income in
8 this instance.

9 Q. So is the umpire considered a neutral party?

10 A. That is correct.

11 Q. And are the findings of the appraisal panel the three
12 appraisers, I believe you said, one for the insurers, one for
13 World Trade Center properties, and a neutral that was agreed
14 upon, are their findings binding, then, on the parties for the
15 appraisals done?

16 A. Yes, they are.

17 MS. TAYLOR: Mr. Campbell, if you could put up C4,
18 please.

19 THE COURT: What about 94? Finished with it?

20 MS. TAYLOR: Yes, sir.

21 THE COURT: What am I supposed to learn from 94?

22 MS. TAYLOR: If you'll let me, I can ask the witness
23 if we can --

24 THE COURT: Go ahead. If you want me to learn
25 something, ask the witness.

D7FAWTC3

Beach - direct

1 MS. TAYLOR: Your Honor, do you have a screen that's
2 working?

3 THE COURT: It works, yes. It shows me 95.

4 MS. TAYLOR: OK.

5 THE COURT: Is that the document you want me to look
6 at? Or is it 94?

7 MS. TAYLOR: 95.

8 THE COURT: What happened to 94? You asked me to look
9 at 94.

10 MS. TAYLOR: No. Defendant's Exhibit C4.

11 THE COURT: Oh, sorry. All right. Now, 95. Is there
12 something here you want me to understand?

13 MS. TAYLOR: Yes.

14 Q. Mr. Beach, could you describe what Defendant's Exhibit C4
15 is.

16 A. Yes.

17 THE COURT: We've already done C4.

18 MS. TAYLOR: Your Honor, would you like a copy of
19 Defendant's Exhibit C4?

20 THE COURT: You know, we've had B4. Now this is C4?

21 MS. TAYLOR: Correct.

22 THE COURT: Yes. I would like that. I thought I had
23 it.

24 MS. TAYLOR: May I continue, your Honor?

25 THE COURT: Please.

D7FAWTC3

Beach - direct

1 Q. Mr. Beach, are the appraisal panel's' preliminary findings
2 as to the replacement costs summarized on your exhibits C4?

3 A. Yes, it is. The upper section of this document identifies
4 property damage replacement cost value as determined by the
5 appraisal panel and as agreed.

6 Q. And what was that number?

7 THE COURT: Before you did that, you offer it into
8 evidence, right?

9 MS. TAYLOR: Yes, your Honor. We would like to offer
10 in Exhibit C4 into evidence, as well as A --

11 THE COURT: One at a time.

12 MS. TAYLOR: A4.

13 THE COURT: One at a time. A4 is already in. B4 is
14 in evidence. Now we have C4. Any objection?

15 MS. BAGLIN: Yes, your Honor. This is only a partial
16 appraisal finding, and the appraisal only involved certain of
17 the defendants, not all of the defendants, your Honor.

18 THE COURT: You can cross-examine. Objection
19 overruled. C4 is admitted.

20 (Defendant's Exhibit C4 received in evidence)

21 Q. Mr. Beach, how much did the appraisal panel find that the
22 partial replacement cost value of the World Trade Center
23 complex was on the morning of September 11th, 2001?

24 A. The appraisal panel determined that the agreed property
25 damage replacement cost value, which is limited to the core and

D7FAWTC3

Beach - direct

1 shell, was \$4,159,460,085.

2 Q. And what was the total amount of the proofs of loss
3 submitted by World Trade Center Properties for its lost rental
4 income?

5 THE COURT: Before you go on, it says "total agreed
6 partial property damage RCV." What's RCV?

7 THE WITNESS: That would be the replacement cost value
8 of the core and shell components of the World Trade Center, the
9 four buildings.

10 THE COURT: So is this property damage, replacement,
11 what is it, core value? Cash value?

12 THE WITNESS: Yes. What it is is this --

13 THE COURT: What is RCV again?

14 THE WITNESS: RCV would be the replacement cost value.
15 And this exhibit shows that it pertains to the core and shell
16 only. It did not include other items, such as what we call
17 T&I, or tenant improvements. This would just be the core and
18 shell of the four buildings and what the agreed appraisal value
19 findings were on that panel.

20 THE COURT: And that's why it's called partial?

21 THE WITNESS: Correct.

22 THE COURT: So what you've done is taken an overall
23 value, you deducted for the Marriott Hotel that used to be part
24 of one of the buildings, and for the custom house. And what's
25 Manhattan & Hudson? That's the railroad that went inside? Is

D7FAWTC3

Beach - direct

1 that it?

2 THE WITNESS: That is correct. From the core and
3 shell value, deducted was the Marriott and custom house, and
4 they added in components from the Manhattan & Hudson
5 evaluation, which was deemed part of the World Trade Center
6 building and coverage for this loss.

7 THE COURT: And this is the amount that's found by the
8 panel?

9 THE WITNESS: Yes. This is the amount that was found
10 and agreed to by the panel, and, again, not including tenant
11 improvements.

12 THE COURT: Go ahead.

13 MS. TAYLOR: You want me to continue, your Honor?

14 THE COURT: Yes.

15 Q. Mr. Beach, can you describe what tenant improvements are
16 for us.

17 A. Yes. So this would be costs in part of the building, such
18 as walls, floor coverings, paintings, items that go within the
19 building in individual tenant-occupied spaces.

20 Q. And could you describe what "core and shell" would be?

21 A. The core and shell would be the main components of the
22 building -- the steel, the concrete, the windows -- the main
23 structure itself.

24 Q. Now, Mr. Beach, what was the total of the proofs of loss
25 submitted by World Trade Center Properties for its lost rental

D7FAWTC3

Beach - direct

1 income?

2 A. We had reviewed these items earlier on A4, but these are
3 the values put forth for business income and rental value.

4 There were 13 proofs of loss submitted, which totaled
5 \$1,347,805,679.

6 Q. So as of, could you tell us when the appraisal panel issued
7 its preliminary finding on the replacement value of the World
8 Trade Center complex?

9 A. Yes. The actual report and findings were as of February of
10 2007. What this shows is if you add the agreed appraisal value
11 of just over \$4 billion plus the proofs of loss that were put
12 forward, the total undisputed property damage in business
13 income value as of February was \$5.5 billion.

14 Q. And can you remind the Court how much in total available
15 insurance was available for World Trade Center properties?

16 A. Yes. It was found that the total available insurance would
17 be \$4.678 billion.

18 THE COURT: The appraisal panel found \$4.1 billion.
19 But the total of both property damage and business income was
20 \$5.5 billion.

21 THE WITNESS: Yes.

22 THE COURT: Two questions. Is property damage the
23 same as replacement cost?

24 THE WITNESS: Yes. If you could remove --

25 THE COURT: Same, I can read one for the other.

D7FAWTC3

Beach - direct

1 There's nothing different in property damage than there is in
2 replacement value. Is that correct?

3 THE WITNESS: That is correct.

4 THE COURT: Did the appraisal panel function at all on
5 business income?

6 THE WITNESS: They did not complete that process, no.
7 They just completed one of the three goals.

8 THE COURT: So they came to a final determination of
9 \$4.159 billion with regard to replacement cost, and they
10 accepted the total claim for lost rental value. Is that right?

11 THE WITNESS: Yes. The property value was agreed, and
12 the proofs that were submitted in my review were not disputed
13 matter, were the \$1.3 billion, yes.

14 THE COURT: Got it.

15 Q. So, Mr. Beach, as of February 2007, was it clear that the
16 replacement cost value of the complex plus the lost business
17 income already demanded would exceed policy limits available to
18 World Trade Center Properties?

19 A. Yes, that is correct, as of February 2007.

20 Q. If I can refer you to Exhibit B4, Defendant's Exhibit B4
21 again, Mr. Beach, did World Trade Center Properties receive the
22 entire \$4.091 billion in insurance payment in a lump sum
23 through settlement agreements?

24 A. Not through lump sum, no. As this exhibit shows and we
25 previously revealed, there was approximately \$1.3 million paid

D7FAWTC3

Beach - direct

1 prior to settlement agreements and some \$3.27 billion paid as a
2 result of settlement agreements.

3 Q. I want to make sure I heard you correctly. Was that \$1.3
4 billion?

5 THE COURT: It's in the numbers. It's in the exhibit.
6 I have it.

7 A. Correct.

8 Q. Do you have an opinion on what the \$1.3 billion was paid
9 for by the insurers prior to any settlements?

10 A. Yes. A few of the insurers had issued payments on a
11 policy-limit basis. These payments would have been made in
12 response to proofs of loss, payment directed letters relating
13 to business income and property damage.

14 Q. Were the majority of moneys paid in response to settlement
15 agreements?

16 A. Yes. That would be correct.

17 Q. In your connection with your work on this case, did you
18 review those settlement agreements?

19 A. Yes, I did.

20 Q. What was your purpose in reviewing the settlement
21 agreements?

22 A. The primary purpose was to determine the amounts that were
23 paid in response to those agreements.

24 Q. In your career as an adjustor, have you had experience
25 facilitating releases for insurers?

D7FAWTC3

Beach - direct

1 A. Yes, I have.

2 Q. In your experience, when do insurers usually seek to secure
3 a release when resolving a claim?

4 A. A release would be utilized in the event there was a
5 negotiated settlement of claims that were in dispute, as well
6 as those that were in litigation. It would be common and
7 customary to obtain a release agreement.

8 Q. Why is that done?

9 A. The release agreement gives peace to the claim. It
10 protects both parties. And it basically states there will be
11 no further claims made and no further -- no further claims
12 asserted and no further claims paid in relation to the
13 insurance event.

14 Q. In your experience, can you look at a settlement release
15 alone to determine why an insurer paid a claim?

16 A. Not on its -- the settlement agreement would tell you what
17 values were paid or what amounts were paid, but you would still
18 have to rely upon the underlying documents that were submitted
19 by the insurers, negotiated, supportive of the claim.

20 Q. Do you have an opinion on whether any portion of the \$3.2
21 billion paid pursuant to the settlement agreement was paid on
22 account of any specific claim element?

23 A. It's my opinion that all of those payments would have
24 resulted, as a result of the claims that were submitted, claim,
25 documented. Insurers will issue payments on that basis. In

D7FAWTC3

Beach - direct

1 this case that would have been the business income claim and
2 the property damage claims.

3 Q. Mr. Beach, have you seen any evidence in the thousands of
4 pages you reviewed to suggest that the insurers paid on
5 anything other than the actual cash value or replacement cost
6 value of the complex and the business interruption claims of
7 lost rental value?

8 A. No, I have not.

9 Q. Mr. Beach, I would now like to turn your attention to World
10 Trade Center 7. Can you tell me why we're talking about this
11 property separately?

12 A. Yes. World Trade Center 7 was owned by a different entity
13 of Silverstein Properties. There was one building that we're
14 dealing with under this situation, and one policy of insurance,
15 as opposed to multiple insurers.

16 Q. Could you describe the insurance that was in place for
17 World Trade Center 7?

18 A. Yes. The policies provided coverage for property damage,
19 business income, also referred to as rental income value.

20 Q. So was the coverage that covered World Trade Center 7
21 similar to that which had provided coverage for the complex?

22 A. Yes. They were similar in that the coverage was afforded
23 for property damage and business income, which would respond to
24 the claims put forth as a result of the 9/11 incident.

25 Q. Mr. Beach, did you form any opinions on your review of the

D7FAWTC3

Beach - direct

1 matter on what claims 7 World Trade Co. submitted and
2 documented in its proofs of loss and supporting documentation
3 on its claim?

4 A. Yes. Similar to the complex, claims were put forward for
5 the damages to the building, as well as the rental income
6 losses, one difference being that in the World Trade Center 7
7 claims, claims were actually submitted and documented for
8 personal property.

9 Q. Did 7 World Trade Co. seek coverage for any other claim
10 elements from IRI?

11 A. No. Again, similar to complex claim, several claims that
12 were asserted in their documents were items to be determined,
13 but, again, there was no claim quantified document submitted
14 for these to be determined items other than the personal
15 property items I mentioned.

16 MS. TAYLOR: Mr. Campbell, could you put up Joint
17 Exhibit 206.

18 Q. Mr. Beach, what is this document?

19 A. This is a partial claim summary and supporting
20 documentation that was prepared for WTC by their claim
21 consultant, Cambridge Horizon Consultants.

22 Q. And did this documentation include a value for the World
23 Trade Center 7?

24 A. Yes. If you would scroll a couple pages through, yes.
25 There is a three-page partial preliminary claim summary, as it

D7FAWTC3

Beach - direct

1 is headed, and this document provides a value of the destroyed
2 building on a replacement cost basis of \$1,058,600,000. Item
3 no. 2, which is identified as personal property, has items
4 listed as TBD. As I've mentioned, they did subsequently claim
5 these items.

6 If you could turn to page 2, there are additional
7 to-be-determined items here, identified as "other covered
8 property," but again not documented.

9 And then if you turn to the third page, you'll see
10 that a claim was put forth for time element and extra expense,
11 which was quantified as 441 million.

12 Q. Now, Mr. Beach, we haven't spoken about the term "time
13 element" before. Could you tell us what "time element" is.

14 A. Yes. "Time element" is a common term used in the insurance
15 industry, which is to provide compensation to a policyholder
16 for their income losses as a result of a covered event or
17 damage to a building.

18 THE COURT: Just income or revenue?

19 THE WITNESS: Revenue as well. It would be your
20 revenues --

21 THE COURT: You deduct expenses. For example, if
22 you're paying rent and receiving rent -- put it this way. Is
23 there a difference between a business interruption clause,
24 which gives you lost revenue, and this time element, which
25 gives you lost income?

D7FAWTC3

Beach - direct

1 THE WITNESS: No. Under the IRI policy, they actually
2 refer to it as rental coverage. So it is going to be their
3 revenue losses less any expenses that don't continue plus any
4 extra expenses. That would be the claim that was put forward
5 here.

6 THE COURT: What would be a claim that doesn't
7 continue? An expense that doesn't continue?

8 THE WITNESS: Such as utility services to the
9 building, as it doesn't exist, cleaning crews that would
10 normally clean the building, and various others, but those are
11 examples.

12 Q. Mr. Beach, did 7 WTC Co. put forward a report on the actual
13 cash value of World Trade Center 7 to its insurer?

14 THE WITNESS: Yes, they did, at a later date. This
15 claim summary is on a replacement cost basis. But they did do
16 that in the future, near future.

17 MS. TAYLOR: Mr. Campbell, if you could put up
18 Defendant's Exhibit 2.

19 THE COURT: Let me look at this a few minutes.

20 So paragraph IV.A deals with this lost revenue called
21 "time element." Right?

22 THE WITNESS: Yes.

23 THE COURT: Subparagraph A provides for rental value,
24 period of indemnity. What was the period of indemnity?

25 THE WITNESS: The period of indemnity would be the

D7FAWTC3

Beach - direct

1 time frame from the date of the loss to an anticipated time
2 when it would take it rebuild the structure. So if they took
3 three years to rebuild tower 7, the period of indemnity would
4 be three years.

5 THE COURT: And caption B is "Rental Value: Extended
6 Period of Indemnity (1 year)." What does that mean?

7 THE WITNESS: Yes. The policy has a provision we
8 refer to as EPOI, or extended period of indemnity, which would
9 compensate the insured for the difference of what their revenue
10 was prior to the loss and compared to what it was after the
11 loss. So it gives them a time to, as I would say, catch up, to
12 return their revenue stream to the level it existed prior to
13 the loss.

14 THE COURT: And mitigating expenses, what are they?

15 THE WITNESS: They've been characterized in this
16 exhibit as mitigating expenses, which were retreating costs.
17 I consider those as being extra expenses, but in this claim
18 presentation they've identified them as retreating costs.

19 THE COURT: So you don't accept that as an
20 administrative. You would take that as something to be
21 deducted.

22 THE WITNESS: I would, yes. As an adjuster, I
23 wouldn't characterize them as mitigating but as extra expenses.

24 THE COURT: So the total, as you would take it, would
25 be about \$355 million.

D7FAWTC3

Beach - direct

1 THE WITNESS: Well, yes. I state that separately
2 because there is a policy sublimit for extra expenses that
3 would limit any extra expense claim asserted. It's a limit of
4 \$1 million. In this case the claim was put forward for \$86
5 million, what has been characterized as mitigating, I consider
6 those extra expenses. So I believe those costs would be
7 limited under the policy to \$1 million.

8 THE COURT: So you would cap this claim at something
9 like \$356 million.

10 THE WITNESS: Correct, yes, for the time element and
11 extra expense.

12 THE COURT: Then you add the replacement cost to this.

13 THE WITNESS: Correct, in arriving at the \$1.5
14 billion.

15 THE COURT: Do you have an extra copy of this exhibit?

16 Just the summary pages.

17 I didn't understand you were putting in this whole
18 book, just dealing with a summary.

19 MR. BYRNES: The summary is contained within the
20 beginning of the book, but I'd be happy to give you the portion
21 of the summary, your Honor.

22 THE COURT: Thank you. Make this the summary portion
23 of the exhibit. That's the whole point of a summary, as I said
24 before. You don't have to deal with the underlying papers.
25 You can do it later. Keep going, Ms. Taylor.

D7FAWTC3

Beach - direct

1 Q. Mr. Beach, is this the report that 7 World Trade Center
2 Company put forward to put value on the actual cash value of
3 World Trade Center 7?

4 A. Yes, it is. If you turn to the pages within this exhibit,
5 it shows what those values were calculated at. Again, they
6 have submitted a replacement cost value of World Trade Center 7
7 at 1.058 billion. They applied depreciation of \$86 million and
8 calculated the actual cash value of \$958 million.

9 Q. Did 7 World Trade Center company revise its estimates for
10 the building value?

11 A. At some later date they did, yes.

12 MS. TAYLOR: And, Mr. Campbell, if you could put up 2
13 exhibits.

14 THE COURT: Leave it up for a minute.

15 And here again, the depreciation is an estimate about
16 how long the building was in operation independently of
17 whatever was done in the accounting books, but just as an
18 estimate of how much deterioration there was in the building,
19 as compared to a new building.

20 THE WITNESS: That is correct, approximately 8 percent
21 or so of the 86 million compared to the 1.058 billion.

22 THE COURT: One second, please. OK.

23 Q. Mr. Beach, I believe you were going to tell us about the
24 actual cash value and the revised estimates that were put in by
25 7 World Trade Center company.

D7FAWTC3

Beach - direct

1 A. That is correct. This document is dated February 24th of
2 2003, and through this document, a revised replacement cost and
3 actual cash value was presented. If we turn to the next page,
4 it shows those revised numbers. Instead of 1.058, that's
5 revised to reappraisal cost of 1.053. And the actual cash
6 value has come down proportionately, from 958 million to --
7 excuse me -- from 958 on the prior document to 953 million at
8 this point in time.

9 Q. Mr. Beach, did 7 World Trade company put forward a proof of
10 loss on a claim?

11 A. Yes, they did.

12 Q. Is what's on the screen? The proof of loss for 7 World
13 Trade Center?

14 A. Yes, it is.

15 Q. Was any support provided with this proof of loss?

16 A. Yes. The World Trade Centers had relied upon the previous
17 reports that had been prepared by Cambridge Horizon. And in
18 this proof of loss, if you would turn to item 6, the next page,
19 it identifies those amounts that were claimed based on the
20 prior submissions. Through this proof of loss, they were
21 claiming \$953,205,000 for the property damage. That's on line
22 3. And at the -- correct, in that situation there. And at the
23 bottom they prefer to the business income rental claim of \$441
24 million.

25 Q. You mentioned earlier that 7 World Trade company documented

D7FAWTC3

Beach - direct

1 and quantified a personal property claim that had originally
2 been identified as TBD. How did it do so?

3 A. To this proof of loss that we're looking at now, they had
4 supplemented it and submitted an initial personal property
5 claim of just over a million dollars.

6 MS. TAYLOR: Mr. Campbell, can you put up Joint
7 Exhibit 212.

8 THE COURT: Is that against a different insuring
9 agreement?

10 THE WITNESS: No. This would be the same insuring
11 agreement, just a supplement to their previous proof of loss.
12 This one here shows the added value for the personal property.

13 THE COURT: But you're already over the insurance
14 limits, aren't you?

15 THE WITNESS: Yes. Proofs of loss were in excess of
16 the limits. However, they would not yet been accepted by
17 insurers. But the claims were still put forward for the
18 personal property by WTC 7.

19 THE COURT: What's the point of doing that?

20 THE WITNESS: They were documenting an item as to be
21 determined that they indicated they may be putting forth a
22 claim for. So this is the format in which they have now
23 presented it.

24 THE COURT: How could they put forward a claim if
25 there's no insuring agreement against which it could be put

D7FAWTC3

Beach - direct

1 forward?

2 THE WITNESS: It could be put forth under the
3 insurance contract. There is coverage for the building,
4 personal property, and business income.

5 THE COURT: Separate amounts? Separate insuring
6 amounts?

7 THE WITNESS: No, they are not. This is a blanket
8 policy of insurance. There are not separate amounts called out
9 for the coverages.

10 THE COURT: So once you exceed the ceiling, what's the
11 point of putting in more claims?

12 THE WITNESS: I can only suspect that they were trying
13 to document those claims in that the insurance carriers had not
14 yet accepted the original.

15 THE COURT: You don't know, though.

16 THE WITNESS: I don't know.

17 THE COURT: So the answer should be stricken.

18 Go ahead, Ms. Taylor.

19 Q. Mr. Beach, is this the supplemental proof of loss that you
20 referred to earlier?

21 A. Yes. And, again, if you would turn to the next page, it
22 will --

23 THE COURT: This is Joint Exhibit 212?

24 MS. TAYLOR: Yes.

25 THE COURT: Are you thinking to offering it into

D7FAWTC3

Beach - direct

1 evidence?

2 MS. TAYLOR: Yes, your Honor. I'd be happy to offer
3 it into evidence.

4 THE COURT: Well, you'll be happy, I don't care if
5 you're happy or sad. Is it your intention to put it in
6 evidence?

7 MR. PODESTA: I will offer it into evidence, your
8 Honor.

9 MS. BAGLIN: No objection, your Honor.

10 THE COURT: Received.

11 (Joint Exhibit 212 received in evidence)

12 Q. Was the amount for the personal property, business personal
13 property, quantified in this proof of loss?

14 A. Yes, it was. As shown in item no. 6, the amount was
15 \$1,088,000, and documents were presented in support of that
16 value by WTC 7.

17 Q. Did 7 World Trade Center provide any documentation with its
18 personal property claim?

19 A. Yes, they had.

20 Q. And did 7 World Trade company supplement this personal
21 property claim?

22 A. Yes, they did. At a later date, they had supplemented it
23 and had put forth a claim of approximately \$1.8 million for
24 personal property.

25 MS. TAYLOR: Mr. Campbell, if you could put up Joint

D7FAWTC3

Beach - direct

1 Exhibit 213.

2 Q. Mr. Beach, is this the Cambridge Horizon claim summary in
3 which the personal property claim was supplemented?

4 A. Yes, it is. And, again, if you would turn to the following
5 pages, it will show in this category 28 line items identified
6 as a summary, to which the value of the personal property claim
7 is \$1.846 million.

8 MS. TAYLOR: Your Honor, we would like to offer Joint
9 Exhibit 213 into evidence.

10 MS. BAGLIN: No objection, your Honor.

11 THE COURT: Received.

12 (Joint Exhibit 213 received in evidence)

13 Q. Did 7 World Trade Center Co. issue any additional proofs of
14 loss or supplements of proofs of loss with respect to World
15 Trade Center 7?

16 A. No, they did not.

17 Q. So to clarify, did 7 World Trade Center company ever
18 document or quantify the remain TBD items they had listed?

19 A. No, they did not.

20 Q. Did 7 World Trade Company demand payments from its insurer,
21 IRI?

22 A. Yes, they did. They had submitted the proof of loss which
23 we reviewed, and there were also various payment directive
24 letters where they were seeking payments as well.

25 Q. If I can turn your attention to Defendant's Exhibit D4.

D7FAWTC3

Beach - direct

1 MS. TAYLOR: And, your Honor, this is a chart. Would
2 you like a copy?

3 THE COURT: Yes.

4 MR. BYRNES: Your Honor, if I may also hand you up the
5 abbreviated version of the prior exhibit, 206.

6 THE COURT: Yes.

7 MR. BYRNES: Thank you, your Honor.

8 Q. Did you create this document, Mr. Beach?

9 A. Yes, I did. Yes, I did.

10 Q. And could you tell us what you reviewed and relied upon in
11 creating this document?

12 A. Yes. In fact, this is an exhibit that was developed from
13 exhibits which were part of my expert report that was
14 presented. I relied upon payment directive letters that were
15 submitted by WTC to their insurers. I relied upon
16 documentation showing what payments were made in response to
17 those payment directive letters. I also reviewed the
18 information that was supported in those letters. There were
19 also some letters from IRI's counsel to the insured which I had
20 reviewed, as well as the final settlement agreement that is
21 listed at the bottom of the document.

22 Q. Can you explain how you created this document, what it's
23 intended to display?

24 A. Well, yes. Giving a few examples, line item 1, the payment
25 directive letter for rental interruption was put forward by WTC

D7FAWTC3

Beach - direct

1 7 on October 23rd, requesting payment of \$18 million. Shortly
2 thereafter, IRI had issued payment in that same amount through
3 four checks for \$18 million.

4 A couple other examples, again, moving down to May
5 24th, 2002, a payment directive letter was issued for rental
6 interruption for \$20 million. IRI issued a payment in that
7 same amount, \$20 million. That example follows through here on
8 several occasions, including both rental interruption and
9 property damage claims requested, demanded, and paid in
10 response, by IRI.

11 Q. Does 7 WTCP Co.'s letters demanding payment and the
12 payments made by IRI from 2001 through 2002 match up exactly?

13 THE WITNESS: They did indeed, yes.

14 Q. I see on this exhibit that a payment of \$332,275,000 was
15 made by IRI and it's noted as "ACV payment"? Could you tell us
16 a bit about that.

17 A. Yes. IRI had determined in this point in time what they
18 believed to be the ACV value of the property. They had issued
19 a letter to World Trade Centers indicating that they would be
20 tendering payment based upon their ACV calculations. The
21 letter suggested an ACV amount of \$440 million. At this point
22 in time, some \$108 million has already been paid. So
23 essentially IRI was going to pay them the difference, which was
24 \$332 million.

25 Q. Can you remind us again what ACV payment, how that ACV

D7FAWTC3

Beach - direct

1 payment is defined?

2 A. I defined ACV as the replacement cost value of the building
3 less depreciation but not less than market value.

4 THE COURT: What kinds of property are you talking
5 about?

6 THE WITNESS: In this case it would be the physical
7 property, the buildings that existed -- or World Trade Center
8 7.

9 THE COURT: And that \$332 million, is that subsumed in
10 what the appraisal panel found?

11 THE WITNESS: No, sir, your Honor. This was a
12 calculation that was prepared by IRI internally. There was not
13 an appraisal panel ruling on the World Trade Center 7 case, at
14 least one that had been agreed upon.

15 THE COURT: No appraisal panel function. You just
16 took whatever was submitted, looked at it, and accepted it.

17 THE WITNESS: For the purpose of this exhibit, yes.

18 THE COURT: Well, forget about the exhibit. For the
19 purpose of actually paying the insured and getting the release
20 from the insured.

21 THE WITNESS: Yes. At this point in time, a release
22 had not been obtained.

23 THE COURT: Well, you aren't finished paying.

24 THE WITNESS: Correct.

25 THE COURT: But it was contemplated that when you

D7FAWTC3

Beach - direct

1 finished paying, you would get a release.

2 THE WITNESS: Yes. That is correct.

3 THE COURT: So this portion of the payment and all
4 preceding payments were made in the contemplation that the
5 insured would accept it and give you a release.

6 THE WITNESS: Yes. In fact, the payment directive
7 letters demanded payments. Payments were issued up until this
8 January 24th date where IRI had asserted what the value was and
9 issued a payment on their own evaluation, not necessarily in
10 response to a payment directive letter in the examples
11 previously given.

12 THE COURT: Go ahead.

13 Q. Mr. Beach, when an insurer responds to the destruction of a
14 building, does it typically advance the actual cash value
15 amount even when the insured is rebuilding the building?

16 A. Yes. Actual cash value payments would be issued whether
17 they were rebuilding or not. In this case, it appears that's
18 what IRI was doing, was paying what they had calculated the
19 actual cash value at.

20 Q. And would World Trade Center 7 use the moneys that had been
21 advanced on an actual cash value basis in rebuilding World
22 Trade Center 7?

23 A. That would be the intent when they're rebuilding. In fact,
24 they were rebuilding in this instance, yes.

25 Q. And would then 7 World Trade Company be due from IRI the

D7FAWTC3

Beach - direct

1 difference between the actual cash value and the ultimate
2 replacement cost up to policy limits?

3 A. Well, we previously referred to that term as the
4 depreciation holdback. Yes. They would be entitled to recover
5 that amount up to the agreed value or to policy limits, yes.

6 Q. Did 7 WTC Co. initiate an appraisal proceeding and
7 litigation against IRI?

8 A. Yes, they did.

9 Q. When you reviewed the materials, do you have a general
10 understanding of the basis of the dispute?

11 A. Yes. It's my understanding that World Trade Center 7 did
12 not agree with the methodology that was used by IRI in arriving
13 at their ACV calculation and payment.

14 Q. Were adjustors and consultants still valuing the claim
15 outside of the appraisal proceedings in litigation?

16 A. Well, yes. If I could clarify, after these \$332 million
17 was issued, there was a request for appraisal, a suit that was
18 filed. However, my review of the documents suggests that the
19 adjustment process continued. Adjustors, accountants,
20 consultants were still valuing the loss. And in fact
21 additional payments were made prior to resolution of the
22 litigation.

23 Q. Are those additional payments set forth on Exhibit D4?

24 A. Yes, they are. Three additional payments that were made
25 after the \$332 million payment.

D7FAWTC3

Beach - direct

1 Q. So is that the payment of \$48 million, the payment of
2 nearly \$18 million, and the payment of \$8.7 million?

3 A. That is correct, yes.

4 Q. So by the end of November 2004, how much had IRI paid 7
5 World Trade Companies?

6 A. At this point it was \$515,554,889.

7 Q. Mr. Beach, do you have an opinion on what claim elements
8 IRI paid the \$515,554,889?

9 A. Yes. Those payments would have been made for the rental
10 interruption and property damage claims asserted by WTCP.

11 Q. And the property damage claims asserted by World Trade
12 Center Company here, would that have been for the building?

13 A. Yes, it would have been for the building.

14 Q. Did IRI and 7 World Trade Company eventually reach an
15 agreement concerning this claim?

16 THE COURT: Leave that up, please.

17 A. Yes, they did. In fact, if you look at the last entry on
18 this sheet, dated January 3rd, 2005, what references
19 "settlement agreement," additional payment was made by IRI in
20 the amount of \$303,445,111.

21 Q. Mr. Beach, do you have an opinion on what the \$303,445,111
22 was paid on by IRI?

23 A. Yes. It's my opinion that payments were made on the claims
24 that were put forward by with the company and documented, which
25 included both rental income property damage as well as their

D7FAWTC3

Beach - direct

1 claim for personal property that was submitted.

2 Q. And on what do you base your opinion?

3 A. As I've previously mentioned, insurers issue payments on
4 those claims that are submitted, documented, quantified. In
5 that case, that would be limited to those categories I've
6 mentioned.

7 Q. And can you remind us again the amount claim for real
8 property, the building, personal property, and a time element
9 in the rental interruption?

10 THE COURT: That's in one of the exhibit, isn't it?

11 MS. TAYLOR: Yes, your Honor, in the Cambridge
12 Horizon.

13 THE COURT: Which exhibit number?

14 MS. TAYLOR: It is in a couple different exhibits.

15 THE COURT: Is it put together in one summary?

16 MS. TAYLOR: No, your Honor. If you'd like us to do
17 that, we could do that.

18 THE COURT: Yes, you should. Thank you.

19 If you're finished with that exhibit, D4 --

20 MS. TAYLOR: Yes, I would like to move Exhibit D4 into
21 evidence.

22 THE COURT: Leave it up, please. Take out the
23 highlighting, please.

24 Rental interruption is the same thing as business
25 interruption, isn't it?

D7FAWTC3

Beach - direct

1 THE WITNESS: Essentially, yes, it is, mm-hmm.

2 THE COURT: And the same as lost income, right?

3 THE WITNESS: Correct.

4 THE COURT: And property damage is the same as
5 replacement value?

6 THE WITNESS: Yes, either valued at replacement cost
7 or ACV, but essentially, yes, for physical value of the
8 property itself.

9 THE COURT: And the payment of \$332,275,000 on
10 February 3, 2003, that's only for property damage.

11 THE WITNESS: Yes. They have characterized that as an
12 ACV payment, which, based upon an evaluation conducted by IRI,
13 it was --

14 THE COURT: Of cash value.

15 THE WITNESS: Of a cash value, correct.

16 THE COURT: Right. So it's the insurer's
17 determination of cash value less than the proof of loss. Is
18 that submitted or the same?

19 THE WITNESS: It would be less than the total value of
20 the proofs of loss put forward.

21 THE COURT: And then what does "recalculation" refer
22 to?

23 THE WITNESS: IRI had continued to evaluate the
24 business income claims and determined that there was additional
25 moneys due, due to the passage of time, and issued additional

D7FAWTC3

Beach - direct

1 payments.

2 THE COURT: For lost income.

3 THE WITNESS: Correct, yes.

4 THE COURT: And that's the same as rental payment, in
5 the next two lines?

6 THE WITNESS: Correct. I would not characterize them
7 any differently, in being the same, yes.

8 THE COURT: And did the settlement agreement include
9 anything other than replacement costs, lost revenue, and
10 personal property?

11 THE WITNESS: In my opinion, it would only consider
12 compensation for those claims, as those are what were put
13 forward and documented.

14 (Continued on next page)

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D7fkwtc4

Beach - direct

1 THE COURT: Was that equal to or less than the amount
2 of claims?

3 THE WITNESS: At the end of the day, it was less.
4 This total under the payment column shows that all prior
5 payments before the settlement, plus those as a result of the
6 settlement, totaled \$819 million, and the claims that were put
7 forward by World Trade Center were approximately \$1.5 billion,
8 total, from those three same components.

9 THE COURT: Were any other claims rejected on the part
10 of the insurers?

11 THE WITNESS: Well, I don't believe they originally
12 accepted the proofs of loss, but at the end of the day a
13 settlement was reached --

14 THE COURT: Apart from the categories of claim that
15 were put forward and documented, were any other components of
16 claim rejected?

17 THE WITNESS: No, not that I'm aware of, in my review
18 of the documents, no.

19 THE COURT: Were any others documented?

20 THE WITNESS: No.

21 THE COURT: Were any others itemized in any other way
22 other than that as shown previously?

23 THE WITNESS: No.

24 THE COURT: That's the basis of your opinion?

25 THE WITNESS: Yes, it is.

D7fkwtc4

Beach - direct

1 THE COURT: OK, thanks.

2 MS. TAYLOR: Your Honor, the aviation defendants would
3 like to move Exhibit D-4 into evidence.

4 THE COURT: Yes, any objection?

5 MS. BAGLIN: No objection, your Honor.

6 THE COURT: You have to do that before you work on the
7 exhibit, not after, right?

8 MS. TAYLOR: Yes, your Honor.

9 THE COURT: Let's take a short break. Ten minutes.

10 (Recess)

11 THE COURT: Shall we resume. Ms. Taylor, please
12 continue.

13 And, Mr. Beach, I remind you that you are under oath.

14 THE WITNESS: Thank you.

15 BY MS. TAYLOR:

16 Q. Mr. Beach, do you have an opinion concerning whether IRI
17 paid monies to obtain the broad settlement release terms in the
18 settlement agreement?

19 A. Yes. It's my opinion that no additional payment was made
20 for that purpose, but payments were all related to the property
21 damage, business income and personal property claim that was
22 asserted.

23 Q. Mr. Beach, did IRI allocate the \$819 million that it paid
24 for the World Trade Center 7 claim?

25 A. Yes. They did that through a claim handling instruction

D7fkwtc4

Beach - direct

1 sheet, which we saw earlier today.

2 MS. TAYLOR: Can we put up, Mr. Campbell, Joint
3 Exhibit 201. Your Honor, we would --

4 THE COURT: I don't think we've seen this before.

5 MS. TAYLOR: I believe Mr. Williamson showed it in
6 part of his opening.

7 THE WITNESS: Yes.

8 MR. WILLIAMSON: That's correct, yes.

9 THE COURT: All right, so you need to offer it in
10 evidence?

11 MS. TAYLOR: Yes, your Honor. Defendants would like
12 to offer JX 201 into evidence.

13 THE COURT: What is this document, Mr. Beach?

14 THE WITNESS: This is an internal IRI document,
15 referred to as the loss handling instructions. And what it
16 does is it sets out in the bottom section of this form how the
17 money was allocated and that was paid by IRI.

18 THE COURT: Do you give this to the insured?

19 THE WITNESS: No. This was an internal document by
20 IRI, not -- I don't believe it was shared with WTC people.

21 THE COURT: Any objection, Ms. Baglin?

22 MS. BAGLIN: No objection, your Honor.

23 THE COURT: Received.

24 (Joint Exhibit 201 marked for identification)

25 THE COURT: I don't see the point of it, though, if

D7fkwtc4

Beach - direct

1 it's not given to the insured.

2 THE WITNESS: What it tells me is that IRI did
3 allocate their insurance payments to the categories we have
4 been discussing today, those being property damage and time
5 element, and nothing other.

6 THE COURT: You're not objecting?

7 MS. BAGLIN: No, your Honor. I'll be discussing that
8 on cross-examination, but this is a joint exhibit; we have no
9 objection to the document itself coming in.

10 THE COURT: All right. Proceed.

11 BY MS. TAYLOR:

12 Q. Mr. Beach, is the manner in which IRI internally handled
13 the \$819 million it paid for the 7 WTC claim, does that support
14 your opinions?

15 A. Well, yes, it is my opinion that all of the \$819 million
16 paid would have been as a result of those claims put forward
17 for property damage, business/personal property and rental
18 income, and this document supports my position that that's how
19 they have allocated it.

20 There is a -- just for clarification purposes, there
21 is an additional \$223,141.32, as shown as the total amount
22 paid, but that 223,000 was for a separate building, not subject
23 to this litigation. I think it was identified as 120 Wall
24 Street. But to answer your question, yes, this shows that they
25 did allocate it, IRI did, to those categories of property

D7fkwtc4

Beach - direct

1 damage, PD, and time element, which is TE.

2 Q. And, Mr. Beach, were these the only two claim elements that
3 7 WTC Co. claimed for the loss?

4 A. That is correct, yes.

5 THE COURT: What about personal property?

6 THE WITNESS: Yes, the personal property claim would
7 be included as a PD. It's considered property damage. There's
8 what we call real property damage, is the building, and
9 personal property, being separate but they're both considered
10 as property damage.

11 Q. Mr. Beach, did you review the settlement agreement between
12 IRI and 7 WTC Co.?

13 A. Yes, I had.

14 MS. TAYLOR: Mr. Campbell, if you could put up Joint
15 Exhibit 205.

16 Q. Mr. Beach, does the settlement agreement contain a
17 provision governing the sharing of recoveries that IRI and 7
18 WTC Co. may obtain from the aviation defendants with respect to
19 the destruction of World Trade Center 7?

20 A. Yes, it does. This settlement agreement, I believe, is
21 dated January 3rd of 2005. And if you would turn to, I believe
22 it's page 9, paragraph 10, that would address your question.
23 Yes, it does. It spells out how monies would be distributed in
24 the event of a recovery, subrogation recovery action by either
25 party.

D7fkwtc4

Beach - direct

1 Q. Did 7 WTC Co. ultimately receive funds from IRI pursuant to
2 this provision?

3 A. Yes, they did. They received approximately \$11.9 million.

4 Q. Do you have an opinion as to whether this amount was on the
5 account of any claim element?

6 A. Yes. It's my opinion that IRI would have only been able to
7 recover through subrogation claims, which were covered under
8 their policy and paid under their policy. So, it is my opinion
9 that the full \$11.9 million would have been for property damage
10 and rental income elements.

11 Q. So, following from this, do you have an opinion whether the
12 \$830,936,585 received by 7 WTC Co. was for property damage and
13 time element claims it made under the IRI policy?

14 A. Yes. It's my opinion that all of that money would have
15 been for those claim categories, yes.

16 Q. From your perspective, did the property damage for the
17 building and loss represent income coverages address 7 WTC
18 Co.'s loss when World Trade Center 7 was destroyed?

19 A. Yes, it does. Again, as we've somewhat reviewed herein,
20 the property damage coverage responded to the physical loss or
21 damage to the building, which would enable them to retenant,
22 return their revenue streams, and the rental income coverage
23 would have provided compensation for the period of recovery,
24 that being from the time of the loss until the buildings were
25 reconstructed.

D7fkwtc4

Beach - direct

1 MS. TAYLOR: Mr. Beach, I have no further questions
2 for you at this time.

3 Your Honor, we have a couple housekeeping issues on
4 your request. You requested the itemization of the WTC 7
5 claim, and that is in the joint stipulated facts. If you would
6 like us to also do a chart, we're happy to do so.

7 THE COURT: No, not necessary.

8 MS. TAYLOR: Do you want the paragraph numbers?

9 THE COURT: Yes.

10 MS. TAYLOR: They're paragraph numbers 47, 48 and 49.

11 THE COURT: Thank you.

12 Why don't you just read them into the record.

13 MS. TAYLOR: Yes, your Honor.

14 Paragraph 47: "The amount claimed for replacement
15 cost losses through the interim proofs of losses was
16 \$1,053,399,635."

17 Paragraph 48: "The amount claimed for time element
18 losses through the interim proofs of losses was \$441,698,256."

19 Paragraph 49: "The amount claimed for personal
20 property losses through the interim proofs of losses and
21 personal property claim summary and supporting documentation
22 was \$1,846,139.43."

23 THE COURT: 1,846,139?

24 MS. TAYLOR: Yes, your Honor.

25 THE COURT: Thank you.

D7fkwtc4

Beach - direct

1 MS. TAYLOR: We would also like to move into evidence
2 Joint Exhibits 209 and 210, which I understand counsel from
3 World Trade Center Properties has no objection to.

4 MS. BAGLIN: No objection.

5 THE COURT: What are they?

6 MS. TAYLOR: Exhibit 209 is the proof of loss for
7 World Trade Center 7, and 210 is the letter revising to give
8 you the final replacement cost value and actual cash value.

9 THE COURT: Those are already in evidence. Why do we
10 need them? They're superfluous.

11 MS. TAYLOR: Thank you, your Honor.

12 THE COURT: Cross-examination?

13 Ms. Baglin?

14 MS. BAGLIN: Good afternoon, your Honor, Mr. Beach.

15 May I begin, your Honor?

16 THE COURT: Yes, please.

17 CROSS-EXAMINATION

18 BY MS. BAGLIN:

19 Q. Mr. Beach, I'd like to clarify before we start: I think
20 you were asked several questions about how you, meaning IRI,
21 handled some of the claims or payments here.

22 You were not an adjuster on either the main site
23 claims or the 7 claims; isn't that right?

24 A. That is correct.

25 Q. And you don't work for, or represent, any of the insurers

D7fkwtc4

Beach - cross

1 who insured either the World Trade Center or property claims
2 for 7 World Trade Company; is that correct?

3 A. In this case, that is correct.

4 THE COURT: Could you please keep your voice up,
5 Ms. Baglin.

6 MS. BAGLIN: Yes. I'm sorry, your Honor.

7 Q. You made no decisions about what to pay or why on any of
8 these claims; is that right?

9 A. That's correct.

10 Q. And you personally have attended some of the depositions in
11 this case; isn't that right?

12 A. That is correct.

13 Q. And other than the deposition of Mr. Reilly, were any of
14 those depositions depositions that the defendants took of any
15 of the insurers who actually were involved in the evaluation of
16 payment claims?

17 A. Was I participating or did I sit in on those? No.

18 Q. Did you sit in on any of the depositions of the actual
19 insurers in this case?

20 A. No, I did not.

21 Q. Have you spoken to any of the actual insurers in this case?

22 A. Not in relation to this case, no.

23 Q. So your opinions here today are based just on your own
24 personal experience as an adjuster in the insurance business;
25 is that right?

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Beach - cross

1 A. Based upon my --

2 MS. TAYLOR: Objection, your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: That would be based upon my experience
5 and the review of documents that were part of my analysis, yes.

6 Q. Now, you say that payments for the main site were only for
7 the loss of the buildings and the rental value business income;
8 is that correct?

9 A. Yes.

10 Q. And you don't know how much of the payments were from each
11 of those coverages; isn't that right?

12 A. That is correct.

13 Q. Those are separate coverages, are they not?

14 A. Yeah, they would be separate coverages with respect
15 policies or the coverages, correct.

16 Q. They insure different risks; is that right?

17 A. I guess we'd have to define risk. The risk is the risk of
18 loss to the building and any resulting income from that damage
19 to the building, but they are two different coverages.

20 Q. Well, doesn't business income coverage insure against the
21 risk that you won't have business income? Isn't that the risk?

22 A. For the period of time that it would take to restore the
23 buildings, yes, but not for an indefinite period, yes.

24 Q. And replacement cost insurance insures against the risk
25 that the building itself might be damaged or destroyed, does it

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Beach - cross

1 not?

2 A. Correct, so that it is repaired and they can return their
3 revenue stream, yes, that's correct.

4 Q. And insurers adjust claims for replacement value and for
5 business income losses separately; isn't that right?

6 A. That's part of the overall adjustment analysis.

7 Q. And that's whether or not it's a one-occurrence or
8 two-occurrence underlying event?

9 A. In this case, that would be true, yes.

10 Q. And each of those separate coverage, claims under the
11 separate coverages, on the one hand from business income and on
12 the other for replacement cost of the buildings, they require
13 different proofs, do they not?

14 A. Well, I've heard that discussed today. I don't know that
15 they necessarily would. In fact, on World Trade Center 7, I
16 believe the proof of loss presented included values for both,
17 but --

18 Q. Well, would an insured submit a copy of its rent rolls to
19 support its claim for the replacement cost of the building?

20 A. That could be done simultaneously, yes.

21 Q. Was that done in this case?

22 A. No, I think separate proofs of loss were submitted. In
23 this particular case, yes, there were proofs of loss pertaining
24 to the rental income loss and separate proofs of loss for the
25 building claim.

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Beach - cross

1 Q. And as we saw a little earlier when we looked at the IRI
2 loss handling instructions, that was Joint Exhibit 201, we saw
3 that insurers may account internally for payments under each
4 different coverage separately; isn't that right?

5 A. Yes, in the case of World Trade Center 7, IRI has allocated
6 those values separately.

7 Q. They have assigned, for their own internal purposes,
8 different amounts of money to the property damage coverage and
9 to the time element coverage; isn't that right?

10 A. That is correct.

11 Q. Anywhere in the loss handling instructions, did IRI break
12 out how much they were assigning to personal property versus
13 real property under the PD category?

14 A. No, they have not spelled that out separately.

15 Q. And it's true, isn't it, that IRI's internal allocation
16 allocations here were revised over time; isn't that right?

17 A. Well, this particular allocation was done at this
18 particular time. I'm not sure if I'm answering your question,
19 but the 819 plus the 223 were allocated as of the date of this
20 document.

21 Q. But those were different allocations than the insurer had
22 originally internally put on some of this claim; isn't that
23 right?

24 A. Yeah, that would appear to be the claim, yes.

25 Q. Do you see the handwritten note -- under the number near

D7fkwtc4

Beach - cross

1 the bottom, the 819 million number, do you see the handwritten
2 note there that says, "Currently on TE"?

3 A. Yes, I see -- well --

4 MS. BAGLIN: I'm sorry, it's up to the left,
5 Mr. McLeod, right under the number that says 819,223,141, right
6 under that, there's a hand note, "Thank you." If you could
7 blow it up, "Currently on TE." Do you see that?

8 A. Yes, I do.

9 Q. Do you see below, the 233,000 that's allocated here in
10 these final loss handling instructions, is subtracted from that
11 number, giving a difference of some \$82 million? Do you see
12 that?

13 A. Yes, I do.

14 Q. And do you see the notation at the bottom, the handwritten
15 note to the right of the 82 million, that says, "Shift to PD"?

16 A. Yes, I do.

17 Q. And do you see the handwritten note to the right of that
18 which says, "Credit off TE, put part on PD"? Do you see that?

19 A. That is correct, yes.

20 Q. So IRI, in its own internal allocations, had put more money
21 on time element to begin with and then they were revising their
22 own internal allocation at the time of the final payment; is
23 that right?

24 A. That is correct. I do not have the support necessarily
25 showing the original 3 billion, but as of the date of this

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Beach - cross

1 document, yes, they have been allocated to the values as shown.

2 Q. And it appears that their final allocation to time element
3 was only 233 million; is that right?

4 A. You say only, but, yes, 233 million and 586 million 223 for
5 the property damage, correct.

6 Q. Well, initially it had been some \$82 million higher than
7 that, hadn't it?

8 A. Yes, that's correct.

9 Q. And they actually shifted 82 million to property damage,
10 correct?

11 A. Correct, yes.

12 THE COURT: Shift from what to what?

13 THE WITNESS: It appears they had shifted it from
14 property -- excuse me, from time element, they had shifted an
15 additional \$82 million to property damage.

16 THE COURT: What did that 82 million come from? What
17 does it reflect?

18 THE WITNESS: Unfortunately, I would have no way of
19 knowing.

20 Q. That's right, you don't know why they allocated as they
21 did, only that they did these allocations; is that right?

22 A. That's correct.

23 Q. And you don't know why they originally allocated the time
24 element at a much higher amount than the final allocation;
25 isn't that right?

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Beach - cross

1 A. That is correct.

2 Q. You don't have any information either, do you, that 7 World
3 Trade Company agreed to, or even knew about, any of these
4 internal allocations; isn't that right?

5 A. I don't know that they did or not.

6 THE COURT: I'm assuming that this document has zero
7 value, Ms. Baglin. I don't know if that had occurred to you
8 yet when I suggested that you might object to it, but I don't
9 see what point there is in the document or a minute of time
10 spent on the document.

11 MS. BAGLIN: If it's your Honor's ruling -- and we
12 agree with it -- that internal allocations don't matter, that
13 would be true. This document does show, however, that the
14 insurer --

15 THE COURT: Ms. Baglin, it's your cross-examination.
16 If you would like to waste your time, it's OK with me.

17 BY MS. BAGLIN:

18 Q. Now, business income coverage, Mr. Beach, pays for
19 financial and business losses whereas property damage coverage
20 pays for building repairs to the building itself; isn't that
21 correct?

22 A. Yeah. Once again, that is correct, and it protects them
23 against additional revenue losses of property damage as they
24 can continue the revenue stream. But, yes, in that sense they
25 are.

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Beach - cross

1 Q. Insurance proceeds for the loss of the building don't
2 duplicate lost rent, correct?

3 A. That is correct.

4 Q. If World Trade Center Properties or 7 World Trade Company
5 only had replacement cost insurance, I understand you testified
6 earlier that commonly building managers will get both, but if
7 they only had replacement cost insurance, not business
8 interruption, I'm correct, aren't I, that their insurers
9 wouldn't have paid them anything for business income losses
10 under their replacement cost coverage?

11 A. That's a fair statement, yes.

12 Q. If they didn't have the business income coverage, they
13 couldn't have gotten any payment on their business loss claims;
14 is that right?

15 A. If they were not covered for that category, they would not
16 receive payment --

17 Q. And similarly --

18 A. -- that is correct.

19 Q. -- if they only had business interruption coverage and they
20 didn't have replacement cost or ACV coverage on the building,
21 they only would have been able to recover their business income
22 losses, not any money for the loss of the buildings themselves;
23 isn't that correct?

24 A. If that is the only coverage that they had -- and, as I've
25 testified, that would not be common, but, yeah, that would be

D7fkwtc4

Beach - cross

1 true. It can happen in a smaller retail establishment that may
2 only have rental income coverage, such as a small tenant in a
3 large building, but the answer is, correct, yes.

4 Q. You have to pay for the coverage to get a response from the
5 insurer when you have a loss; is that right?

6 A. That's true, yes.

7 Q. Now, it's your opinion you also say that payments for 7
8 World Trade Center were only for real and personal property
9 losses and rent time element; is that correct?

10 A. Correct.

11 Q. And the reason why you say the insurance payments here were
12 only for property damage and rental value is because claims for
13 the loss of the buildings -- lost rental value and in the case
14 of 7, lost personal property -- are the only covered losses
15 that you say were claimed, well-founded and documented; is that
16 right?

17 A. That is correct.

18 Q. Those are your words, right? They have to be claimed,
19 well-founded and documented?

20 A. Documented and quantified, yes.

21 Q. In your view, insurers require documentation before they'll
22 even consider paying on a claim; isn't that right?

23 A. Yes.

24 Q. And the required documentation would be things like
25 contractor invoices, estimates, consulting reports, rent rolls,

D7fkwtc4

Beach - cross

1 financial documents, things like that; is that correct?

2 A. Correct.

3 Q. And, again, there would have to be documentation of the
4 specific covered loss being claimed? If you want to recover
5 for business income, you have to supply rent rolls or some
6 proof specifically related to your lost rent; isn't that right?

7 A. Yes, such as was done in the case of World Trade Center 7,
8 yes.

9 Q. Ms. Taylor asked you a little bit about some of the TBD
10 claims.

11 MS. BAGLIN: And if I could ask Mr. McLeod to put up
12 Joint Exhibit 5 to the summary pages. It's the second and
13 third pages of the summary. And go to the next page. Thank
14 you.

15 Q. Now, these items that are listed here and on the next page
16 as TBD, this isn't a form document, is it?

17 A. It's a document that was created by --

18 Q. This particular document we're looking at, it's not a form
19 document, right?

20 A. No, I don't believe that it is.

21 If I could finish, it's a document that was created by
22 Cambridge Horizon to support the claim.

23 Q. It appears that they specifically selected out certain
24 coverages to list here as TBD, things that they thought there
25 was a loss for but the amount had to be quantified and

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Beach - cross

1 determined at some later point; is that right?

2 A. Yes, that had been listed as TBD.

3 Q. And the last two things listed --

4 MS. BAGLIN: Well, let me go to the next page, if we
5 could for a minute, Mr. McLeod.

6 Q. Looking at the list of TBD items here -- valuable papers
7 and records, electronic data processing, data and media,
8 personal effects of officers and employees -- those are the
9 kinds of things that in a complete catastrophic loss like this,
10 you would expect there were some of those losses in some
11 amount, would you not, sir?

12 A. Honestly, I don't know. It's possible they did. I don't
13 know the structure of the World Trade Center and to what
14 capacity they occupied the building and had personal property
15 in there. I know that they've asserted claims to be
16 determined, but they didn't document a claim and quantify those
17 items.

18 Q. Would you be surprised, sir, if in a building of the size
19 and scale of the World Trade Center complex and 7 World Trade
20 Center that there were losses of valuable papers and records
21 and some electronic data processing equipment, personal effects
22 of officers and employees?

23 A. If they occupied that building by the insured, that would
24 be expected, yes.

25 Q. Now, there was no time limit, was there, for submitting

D7fkwtc4

Beach - cross

1 documentation of these TBD items?

2 A. No. I just know that they did not do that prior to the
3 settlement, final settlement.

4 Q. If they hadn't settled, their time to put in quantification
5 and other documentation for this wouldn't have run; is that
6 right? They could have put it in?

7 A. I can't say that it would be indefinite, no.

8 Q. But you have no information that there was a time limit
9 that had run for them to do it, do you?

10 A. No. As of the time of the settlement, they had not done
11 that, but I'm not aware of any time limit that was put upon
12 them to do that necessarily.

13 Q. In all the thousands of documents you looked at, you didn't
14 see any correspondence to them from their insurers saying get
15 these claims documented by X date or we're not going to
16 consider them, you didn't see anything like that, did you?

17 A. Just as I didn't see those, I saw no supporting documents
18 for them, that's correct.

19 Q. Am I correct, sir, that no claim for loss of the
20 buildings -- the main site buildings I'm speaking about -- was
21 documented until January 18th of 2002; is that correct?

22 A. That's correct. A proof of loss was put forward asserting
23 a value. However, it was not documented, I believe, until
24 January 8th, pursuant to an exhibit we previously reviewed.

25 Q. That's the supplement number 1 to preliminary proof of loss

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Beach - cross

1 number 2; is that right?

2 A. Correct. That would be the evaluation and claim package
3 put together by Cambridge Horizon.

4 MS. BAGLIN: At this time, your Honor, I'd like to
5 offer in evidence Joint Exhibit 4, which is the supplement
6 number 1. It's a preliminary proof of loss number 2.

7 THE COURT: Are you involved in this document at all,
8 Mr. Beach?

9 THE WITNESS: I'm sorry, excuse me?

10 THE COURT: Were you involved in this document at all?

11 THE WITNESS: I was only involved in the reviewing of
12 this document as part of my expert analysis that's being given
13 today, but I did not create this document, no, by any means.

14 THE COURT: What purpose did your review have with
15 regard to this document?

16 THE WITNESS: It would put forth the claim values that
17 were asserted by World Trade Center complex that we previously
18 reviewed in an exhibit where I summarized all of the proofs of
19 loss presented, three of them which were for property damage,
20 which this one pertains to, and 13 were separately submitted
21 for income losses.

22 THE COURT: Objection?

23 MS. TAYLOR: No objection, your Honor.

24 THE COURT: Received.

25 (Defendant's Exhibit 4 received in evidence)

D7fkwtc4

Beach - cross

1 Q. Mr. Beach, the proof of loss number 2, which this JX 4
2 supplemented, was submitted on November 7th, 2001; is that
3 right?

4 A. I don't see the date here. You could be correct.

5 MS. BAGLIN: I offer at this time Joint Exhibit
6 No. 3 --

7 THE COURT: Is that all you're going to do with this
8 document? Exhibit 10?

9 MS. BAGLIN: At this time, no, your Honor. The point
10 is that this is the first time, according to this witness, that
11 this claim for loss of the building was documented. I'm just
12 trying to establish the timeline here.

13 THE COURT: What's the point?

14 MS. BAGLIN: I think that will become clear as we go
15 along, your Honor.

16 THE COURT: Maybe I'd like to know about it now.
17 What's the point of this document?

18 MS. BAGLIN: This is relevant to Mr. Beach's opinion
19 that none of the insurance payments were made for claims that
20 had not yet been documented and submitted.

21 THE COURT: Give me a little credit for a little
22 intelligence. A payment is made to get a release. So, what's
23 released are the claims that are documented and the potential
24 in the undocumented claims. The real issue is not what the
25 release was for or what the settlement was for; it's whether I

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Beach - cross

1 should ascribe value to these to be determined values. That's
2 the real issue. This document teaches me zero about that.

3 MS. BAGLIN: Your Honor, I believe I can establish
4 with Mr. Beach that these individual payments -- many of the
5 early payments were just advances. They weren't given for
6 releases and no releases were given in exchange for them.
7 There were no releases until the final settlements, your Honor.

8 THE COURT: What would be interesting to me is if you
9 ever delivered any kind of quantification of these additional
10 claims. Did you ever?

11 MS. BAGLIN: Your Honor, that was not done because the
12 case went into litigation. And before the documentation had to
13 be provided, the coverage litigation the claims, everything,
14 was settled apiece and none of that was required in connection
15 with the settlement.

16 THE COURT: Thank you, Ms. Baglin.

17 MS. BAGLIN: I'd like to offer into evidence at this
18 time Joint Exhibit No. 3 and hand a copy to the witness.

19 THE COURT: What's the point of this document?

20 MS. BAGLIN: Well, I had asked Mr. Beach and he didn't
21 remember when the first preliminary proof of loss number 2 was
22 submitted.

23 THE COURT: What was the date?

24 MS. BAGLIN: The date on the document here, which I
25 think it was submitted on November 7th of 2001.

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Beach - cross

1 THE COURT: Does that date --

2 Q. Does that refresh your recollection?

3 THE WITNESS: Yes, I --

4 THE COURT: Who cares the first time?

5 THE WITNESS: Yes, that's fine.

6 THE COURT: The date is in evidence. We don't need
7 the document.

8 BY MS. BAGLIN:

9 Q. So, prior to January 18th, 2001, when the insurers received
10 a documented claim for the loss of the building, the only
11 documented claim that had been submitted to that point in time
12 was preliminary proof of partial losses number 1, which would
13 have been submitted back in October; is that right?

14 A. Yeah, I believe that was submitted on October 8th for
15 approximately \$136 million, to which the payment of \$75 million
16 was issued.

17 Q. And that was a preliminary proof of partial loss for
18 business income, was it not?

19 A. That is correct.

20 Q. Through March 31st, 2002?

21 A. I don't recall the exact date, but that sounds correct,
22 yes.

23 Q. By the way, Mr. Beach, were any proofs of loss ever
24 submitted for something that the insureds referred to as
25 economic loss to net leaseholds?

D7fkwtc4

Beach - cross

1 A. We previously reviewed the exhibit which outlined the
2 proofs of loss that were submitted, and they were identified as
3 business income. And as I testified, and placed in quotes, I
4 don't remember that language being used.

5 Q. The titles you put on your chart were the only titles you
6 saw in any of the proofs of loss, right?

7 A. Those are how the proofs of loss were titled, by WTCP, as
8 we added language to those proofs that were not titled for
9 property damage claims.

10 Q. Would you agree, sir, that most of the business income
11 losses that were claimed in preliminary proof of partial loss
12 number 1, the one submitted in October 2001, had not yet been
13 incurred at the time that preliminary proof of loss was
14 submitted?

15 A. I think it was clear at that time that there would be an
16 income loss through the period that it covered. But, that is
17 correct, the proof of loss was dated November 7th and carried
18 out a calculation beyond that day, so it was not just limited
19 to the 28 days, if that answers your question.

20 Q. That proof of loss for business income was submitted on
21 October 8th, was it not?

22 A. Excuse me, October 8th, so a month and a week after 9/11,
23 correct.

24 Q. Is a claim for business income losses that have not yet
25 been incurred a well-founded and documented claim, in your

D7fkwtc4

Beach - cross

1 view?

2 A. In the case of this incident, the terrorist attacks, it was
3 very clear, there was physical damage to the building, it was
4 destroyed, and that there would be a resulting impact of
5 revenue. So I think that was clear. Physically tangible
6 damage made it clear in my mind that there was damage and there
7 would be a loss of revenue claim.

8 Q. And the very first preliminary proof of loss for business
9 income losses, that was supported by rent rolls and cash flow
10 projections, correct?

11 A. That is correct, yes.

12 Q. And that's adequate documentation for the insurers to
13 consider and make payment?

14 A. Correct.

15 Q. And until the supplement to preliminary proof of loss 2 was
16 served on January 18th, the only documented claim on which the
17 insurers could have issued payments, in your view, was this
18 first preliminary proof of loss for business income; is that
19 right?

20 A. As I previously testified, there were some insurers -- I
21 don't have the chart in front of me with the exact dates --
22 some insurers had issued payments immediately, a few insurers,
23 but, yes, prior to the submission of proof of loss number 2 and
24 supplements, the only claim that was submitted in the form of
25 proof of loss was for an income value to which insurers

D7fkwtc4

Beach - cross

1 responded to the tune of \$75 million.

2 MS. BAGLIN: Could we put up Exhibit B4, Mr. McLeod.

3 Q. This is the chart you created, Mr. Beach?

4 A. Yes, it is.

5 Q. This chart doesn't -- first, let me clarify a couple things
6 about this chart, if I may.

7 I'm looking across. Under your column "Total
8 Exposure," it lists a number of 4.678 billion; is that correct?

9 A. Yes, that is correct.

10 Q. And that would be the total exposure of the insurers to
11 both Westfield and the World Trade Center Properties
12 plaintiffs; is that right?

13 A. Yes. I'm not sure on the Westfield, to be honest with you.
14 I know it was the total available exposure under the insurance
15 program for the World Trade Center program, yes.

16 Q. Are you aware, sir, that Westfield had its own lease for
17 the retail space with the Port Authority?

18 A. Yes. And I would agree that coverage would have been
19 included as there was a setoff or an amount deducted here
20 earlier for Westfield's property. So, I would agree that it
21 would be covered under the policy, however separate from this
22 litigation as to what payments were made to WTCP complex.

23 Q. But you looked at the policies, the slips and binders, and
24 you saw that Westfield was a coinsured under this same
25 insurance; is that right?

D7fkwtc4

Beach - cross

1 A. Yes, correct.

2 Q. And the claims that were submitted were claims on behalf of
3 both Westfield and the World Trade Center Properties
4 plaintiffs; is that right?

5 A. That is correct.

6 Q. So, when the 4,581,000,000 received, in your right-hand
7 column, that's insurance payments that applied to both World
8 Trade Center Property plaintiffs and Westfield; is that
9 correct?

10 A. Yes, of that payment 490 million was attributed to
11 Westfield retail.

12 Q. That's how much of the insurance money that Westfield got,
13 right?

14 A. Correct, yes.

15 Q. World Trade Center Properties only got 4 billion
16 091-some-odd million; is that right?

17 A. That is correct, yes.

18 Q. Now, in your B4 that you created, you did not include on it
19 or any of the other charts that were presented to us today any
20 of the individual insurer payments; is that right?

21 A. No, that would have been included in my expert report, but
22 this is a compilation of all payments that were made as well as
23 the total exposure.

24 Q. So, in your column that's listed "Payments Before
25 Settlement," that doesn't necessarily mean that those amounts

D7fkwtc4

Beach - cross

1 were paid in single payments, does it?

2 A. That is correct. Some of them may have been; others would
3 be a combination of multiple payments.

4 MS. BAGLIN: I ask to offer Exhibit C3 from your
5 original report. That's, I believe, your chart that shows the
6 individual payments.

7 THE COURT: Why do I need to know what each company
8 paid?

9 MS. BAGLIN: Because it's Mr. Beach's opinion that
10 each and every payment was, number one, only in response to a
11 documented claim and had to be either for business interruption
12 or property damage. And I think when we start to look at the
13 individual payments, you'll see that it's just not correct,
14 your Honor.

15 May I have a copy, please.

16 Q. Mr. Beach, you created this summary, just as you did the
17 other charts that have been offered here in evidence today; is
18 that right?

19 A. That is correct, yes.

20 Q. And you believe that to be a true summary of your findings,
21 as you looked through various payment records?

22 A. Correct, yes.

23 MS. BAGLIN: Your Honor, I offer Exhibit C -- well, I
24 guess we should mark it here as Plaintiffs' --

25 THE COURT: It doesn't make any difference. It's C3.

D7fkwtc4

Beach - cross

1 Received.

2 MS. BAGLIN: C3?

3 THE COURT: Yes.

4 (Exhibit C3 marked for identification)

5 MS. BAGLIN: Your Honor, Ms. Taylor is requesting that
6 we give it a plaintiffs' number. I have no problem with that.
7 That would be Plaintiffs' 563.

8 THE COURT: C3, C3. I'm the judge. It doesn't make
9 any difference who offers it.

10 BY MS. BAGLIN:

11 Q. And Exhibit C3 shows all of the individual payments that
12 are somehow reported on your Exhibit B4; isn't that right?

13 A. Did you say D4?

14 Q. B as in boy, the chart we just looked at.

15 A. Yes, yes.

16 Q. The grand total you have on the last page of Exhibit C3 is
17 the same as the grand total you show on your Exhibit B4; isn't
18 that right?

19 A. Yes, that is correct.

20 Q. So, these are the payments that total up to the amounts you
21 have in B4; am I right?

22 A. Yes. Because we have one exhibit on in front of me and on
23 the screen, would it be OK to have a copy of the previous
24 exhibit that we're referring to? The answer is yes. If we're
25 going to go back and forth, I would like both exhibits in front

D7fkwtc4

Beach - cross

1 of me.

2 MS. BAGLIN: Excuse me. Ms. Palazzolo, can you give
3 the copy witness a copy of C3.

4 THE WITNESS: C3 I have.

5 MS. BAGLIN: He wants the prior one. I'm sorry.

6 THE WITNESS: Thank you.

7 BY MS. BAGLIN:

8 Q. Now, in your report on the main site, Mr. Beach, you said
9 that World Trade Center Properties issued its first preliminary
10 proof of partial loss for business income losses for
11 \$136,758,297, in response to which the insurers agreed to
12 advance 75 million against that claim; is that right?

13 A. That is correct.

14 Q. And, in fact, that first preliminary proof of loss was
15 submitted by both World Trade Center Properties and Westfield,
16 wasn't it?

17 A. Correct, yes.

18 Q. And that \$136.7 million you referred to in your report,
19 that was just World Trade Center Properties business income
20 losses, correct?

21 A. Yes.

22 Q. But the proof of loss itself also included Westfield's
23 claimed business income losses in the amount of about
24 \$17 million; is that right?

25 A. It very well could have. I don't recall that exact

D7fkwtc4

Beach - cross

1 document as I sit here today, but I wouldn't refute that. If
2 it does, I would agree. I know that it included Westfield as
3 an insured.

4 Q. Do you have any reason to dispute that the total amount of
5 the preliminary proof of loss was not 136.7 million but
6 \$153,950,840?

7 A. That's my recollection --

8 MS. TAYLOR: Objection, your Honor.

9 THE COURT: Sustained.

10 MS. BAGLIN: I'd like to offer at this time, your
11 Honor, a document with the Bates numbers SILV7600012 through
12 13. It's a November 12th, 2001 letter from Adam O. Emmerich to
13 several of the insurance companies and their adjusters.

14 THE COURT: Did you have anything to do with this
15 letter?

16 THE WITNESS: I believe I would have reviewed it as
17 part of the thousand pages I had received, but nothing
18 personally, no.

19 THE COURT: What does this bring out?

20 MS. BAGLIN: I'd like to bring out, your Honor, on the
21 second page of the letter, in the last full paragraph, the
22 language -- we can highlight it there -- that, "As you know,
23 the proof of loss requested advances of 136" --

24 THE COURT: I see it, I see it.

25 MS. BAGLIN: That's where we get the 153 million

D7fkwtc4

Beach - cross

1 total.

2 Q. Do you see that, Mr. Beach?

3 THE COURT: Objection sustained.

4 Q. Does this document refresh your recollection as to the
5 aggregate amount of the claim in the first preliminary proof of
6 partial loss for business income?

7 MS. TAYLOR: Objection, your Honor.

8 THE COURT: Overruled.

9 THE WITNESS: It's my recollection that proof of
10 loss --

11 THE COURT: It refreshes your recollection or it
12 doesn't. Does it help you think in any way?

13 THE WITNESS: No, just that the amount of --

14 THE COURT: No. That's all you have to answer.

15 THE WITNESS: Thank you.

16 THE COURT: It doesn't refresh his recollection.

17 MS. BAGLIN: I'd like to offer into evidence Joint
18 Exhibit 2, your Honor, which is the actual first preliminary
19 proof of partial loss.

20 THE COURT: What's the point? What are you trying to
21 prove?

22 MS. BAGLIN: I'm trying to show that not all of the
23 first amount of money that was claimed for business income
24 related to the World Trade Center Properties; and, therefore,
25 payments did not relate just to the World Trade Center

D7fkwtc4

Beach - cross

1 Properties claim.

2 THE COURT: What did it relate to?

3 MS. BAGLIN: Westfield's claims, your Honor.

4 THE COURT: Westfield was a different category. That
5 was deducted from the balance of the claim.

6 MS. BAGLIN: No, this first preliminary proof of
7 loss -- this is before there was that final deduction made.
8 This was a claim by all of the insurers, including Westfield.

9 THE COURT: Just say it and I will accept it.

10 MS. BAGLIN: I was going to call Mr. Beach's attention
11 to the second -- first, I was going to offer it into evidence.

12 THE COURT: If you would just say it, I'll accept it.

13 MS. BAGLIN: I'd like to say that there were two
14 schedules to this proof of loss, one for World Trade Center
15 Properties business income losses, in the amount of
16 136,758,297, and a Schedule D, which set forth Westfield's
17 business income losses in the amount of \$17,192,543, for an
18 aggregate business income loss claim in this first preliminary
19 proof of loss of \$153,950,840.

20 THE COURT: The record will so reflect.

21 MS. TAYLOR: Objection, your Honor. Could counsel
22 refer us to where D is in this, the page number?

23 MS. BAGLIN: D is not attached. It's referred to in
24 on the second page, under paragraph 5, which says --

25 THE COURT: I accept it. Let's move on.

D7fkwtc4

Beach - cross

1 MS. BAGLIN: Now, the \$75 million advance that you
2 referred to in your report as having been made, was an advance
3 requested against the total claim of 153.9 million, isn't that
4 right, not just the World Trade Center portion?

5 A. Well, it was in response to proof of loss number 1.

6 Q. The request for the advance was made by both Westfield and
7 World Trade Center Properties plaintiffs, was it not?

8 A. Yes, it appears it was, correct.

9 Q. The request didn't ask for a certain amount for World Trade
10 Center Properties and a certain amount for Westfield, did it,
11 it just asked for one advance of 75 million; isn't that right?

12 A. That is correct. The key point here is the proof of loss
13 amounts that we are referring to were not accepted in their
14 full at that point. \$75 million was accepted at that point in
15 time in response to the proof.

16 MS. BAGLIN: At this time, your Honor, I'd like to
17 offer into evidence Plaintiffs' Exhibit 511, which is the
18 request for the \$75 million advance.

19 THE COURT: The advance is made, right? We don't need
20 all the documentation, Ms. Baglin.

21 MS. BAGLIN: Well, the terms of the advance are in
22 this exhibit, your Honor. We believe they're important.

23 Your Honor, I have offered this into evidence.

24 THE COURT: It's not qualification for it. Objection
25 sustained.

D7fkwtc4

Beach - cross

1 BY MS. BAGLIN:

2 Q. Mr. Beach, is Plaintiffs' 511 one of the documents you
3 reviewed in coming to your opinions in your report in this
4 case?

5 A. Well, the documents I -- it could have been, I don't
6 recall. As I indicated before, the proof of loss was
7 submitted, and in response to that proof of loss, payments of
8 \$75 million were issued --

9 THE COURT: Did this affect your opinion, this letter?

10 THE WITNESS: Not substantially by any means, no.

11 THE COURT: Objection sustained.

12 Q. You, in your report, refer, do you not, refer to an request
13 for an advance for 75 million; isn't that correct?

14 A. That may have been. If you would like me to refer me to my
15 report, again, my --

16 THE COURT: Just say what your memory is.

17 THE WITNESS: I don't recall.

18 Q. Mr. Beach, do you recall --

19 MS. BAGLIN: If you'd like, I can show the witness his
20 report, your Honor. We can put it up on the screen if that's
21 acceptable.

22 THE COURT: Just show it to him. Ask him if it
23 refreshes his recollection.

24 If it's of interest to you -- it may shorten things,
25 Ms. Baglin -- what I am prepared to understand is not so much

D7fkwtc4

Beach - cross

1 what Mr. Beach said was his opinion as to what the insurance
2 companies paid for. They paid for the release. The release
3 contains a statement not only of the claims that were made but
4 also that could have been made. Doesn't that help you?

5 MS. BAGLIN: It does help us, your Honor.

6 THE COURT: So, why are you pounding the obvious?

7 MS. BAGLIN: Because Mr. Beach's entire opinion is
8 founded on his blanket view that every single payment any
9 insurer made here was based only, or was only for, a documented
10 claim.

11 THE COURT: It's also for a release. The release is
12 beyond the claim.

13 MS. BAGLIN: Right now, your Honor, we're not talking
14 about releases. We're not --

15 THE COURT: But I am and I am making the findings and
16 that's what I will find. I'm not helped by this, not at all.
17 You're just wasting time -- your time, my time, everybody's
18 time. This is not a deposition, it's a trial.

19 BY MS. BAGLIN:

20 Q. In your experience, Mr. Beach, are advance payments made
21 without prejudice to the position of anyone concerning the
22 characterization of the advances?

23 A. Yes, that is a fair statement.

24 Q. And that's what happened in this case, is it not?

25 A. Correct. Proofs of loss weren't accepted in their entirety

D7fkwtc4

Beach - cross

1 but payments were made. As I mentioned earlier in my
2 testimony, some insurers issued their policy limits
3 immediately, others issued advance payments, and at the end of
4 the day, final payments were issued as a result of the
5 settlement agreement.

6 Q. And the advances that were made were expressly stated to be
7 that they wouldn't be allocated with respect to any of the
8 potential coverages or to any one part of the claim; isn't that
9 right?

10 A. Other than a few payments that were made early on, which I
11 have identified in Exhibit C3, that they were attributed to
12 building or rental value, but, no, they did not specify what
13 they were being allocated to exactly.

14 Q. Are you aware, sir, from your review of the file, that the
15 insurers' adjusters had actually written back to the insureds
16 about that first preliminary proof of loss for business income
17 on October 18th, 2001, before any money was ever advanced?

18 A. Yes, I do.

19 Q. And did you see a letter, that October 18th letter, to the
20 two adjusters, Mr. Reilly and Mr. Levin, that they wrote to
21 Willis? Have you seen that letter?

22 A. I probably have. I recall that date, but if you'd like to
23 show it to me, I'd be happy to --

24 THE COURT: No, no, no. Don't encourage her.

25 Q. Are you aware, sir, that at that time --

D7fkwtc4

Beach - cross

1 THE COURT: Isn't this the same point we have been
2 discussing up to now?

3 MS. BAGLIN: Your Honor, the same and related points.

4 Q. At that time, it's true, isn't it, that even though the
5 insurers said they haven't even had a chance to fully review
6 the materials submitted, that they decided on their own, in
7 principle, to make a payment to all of the insureds without
8 prejudice to anybody's rights; is that right?

9 A. That would be a fair statement. At that point in time, it
10 was obvious --

11 THE COURT: It often happens, doesn't it?

12 THE WITNESS: It surely does.

13 THE COURT: If you have a large claim and you want to
14 show some good faith, you pay some money to advance --

15 MS. BAGLIN: And they were really --

16 THE COURT: -- a final resolution, right?

17 THE WITNESS: I would agree, that is common.

18 THE COURT: That's what happened, right?

19 THE WITNESS: Yes, it is, sir.

20 THE COURT: So what do I understand from this,
21 Ms. Baglin?

22 Q. They were willing to make the advance even though they had
23 problems with the preliminary proof of loss; is that correct?

24 THE COURT: Yes, yes, yes, they did. Now move on.

25 Q. And even though they hadn't been given full information

D7fkwtc4

Beach - cross

1 that the insurers said they wanted?

2 THE COURT: Right. Even though the to-be-determined
3 claims had not been codified.

4 MS. BAGLIN: Well, the to-be-determined claims weren't
5 before us here. We're still talking --

6 THE COURT: They're always before us.

7 Q. The insurers, at that early time on October 18th, before
8 they made the advances, told Willis they didn't think the claim
9 was sufficiently documented; isn't that right?

10 A. Yes.

11 Q. And, in fact, they told Willis that the preliminary proof
12 of loss number 1 was not accepted, did they not?

13 THE COURT: Ms. Baglin, what's the difference? We're
14 not going through six days of depositions here. We have three
15 days for trial. Make use of it.

16 MS. BAGLIN: I am trying to, your Honor.

17 THE COURT: No, you're not.

18 Q. And isn't it true that the insurers agreed to make that
19 advance without the need for any further supporting claim
20 documentation?

21 A. It's my opinion that advance payments were made knowing
22 that there was a forthcoming claim and that it would be
23 conceivable to believe that they were in the process of
24 evaluating and quantifying that loss rather than accepting it
25 on its face value immediately.

D7fkwtc4

Beach - cross

1 Q. Am I right, sir, that before the documented claim on the
2 building, there was another \$75 million advance made, not just
3 one but two; isn't that right?

4 A. That would appear to be the case, yes.

5 Q. And that second advance was for \$75 million as well?

6 A. Yes, again, my C4 spells out when payments were made and in
7 what amounts. And I assume that included the 75 million in
8 here, yes.

9 Q. And that total amount, 75 plus 75, \$150 million, that's
10 somewhat less than the total amount that had been requested in
11 the first preliminary proof of loss, isn't that right, of
12 153.9?

13 A. The 136 or the 153 has to be greater than the 136 and it
14 would be less than the 153.

15 Q. The 153.9 is more than the 150 that was advanced, correct?

16 A. I would agree to that, yes.

17 THE COURT: Brilliant, brilliant.

18 Q. And the second advance, you would agree, was on the same --

19 THE COURT: Ms. Baglin, please stop this. If you
20 don't, I'm going to give you a time and when you get to the end
21 of that time, you'll be finished.

22 Q. I'd like to refer you back to your Exhibit C3, which lists
23 some of the individual payments. I'd like to call your
24 attention to the 11/7/01 payment by Royal Specialty of
25 \$2.8 million. Do you see that?

D7fkwtc4

Beach - cross

1 A. Yes, I do.

2 Q. That payment was part of the first advance?

3 A. I know that it was a payment issued by Royal Indemnity
4 for --

5 THE COURT: The answer is yes, no, or I don't know.

6 THE WITNESS: I believe that it would be.

7 Q. And payment was in the amount of Royal Specialty's
8 per-occurrence limit for loss in the first two layers; isn't
9 that right?

10 A. Yes.

11 Q. And that payment was for more than the amount claimed in
12 the preliminary proof of loss, was it not?

13 A. My apologies, I'm not following you. I thought you were
14 specifically referring to the \$2.8 million.

15 THE COURT: Repeat the question, Counsel.

16 Q. That payment was for more than the amount claimed in the
17 first proof of loss; isn't that right?

18 A. If I'm understanding the question --

19 MS. TAYLOR: Objection, your Honor.

20 THE COURT: Sustained.

21 Q. Royal made that payment, did it not, because it wanted to
22 put the insurance into funds promptly, in view of the exigent
23 circumstances; isn't that right?

24 THE COURT: If you know.

25 THE WITNESS: I don't know what their underlying

D7fkwtc4

Beach - cross

1 thought was, but it would make sense that they would issue an
2 advance payment actual to the claims that are known.

3 Q. Even though no documented claim had been submitted,
4 correct?

5 A. That's correct.

6 Coincidentally, I believe a proof of loss was
7 submitted but they issued payment on November 7th for
8 \$2.8 million in response to the terrorist attacks and the
9 resulting damage.

10 Q. Royal Specialty had expressly disagreed with the statements
11 in, and the format of, the proof of loss; isn't that right?
12 They made the payment anyway?

13 MS. TAYLOR: Objection, your Honor.

14 THE COURT: Sustained.

15 Q. I'd like to call your attention to the December 7th, 2001,
16 payment by Copenhagen Re of \$4 million.

17 THE COURT: Are you going to do the same thing with
18 Cope Re?

19 MS. BAGLIN: Very briefly, your Honor.

20 THE COURT: No.

21 Q. Now, in your Exhibit C3, you have a column that reads
22 "Memo," do you not?

23 A. Yes, I do.

24 Q. And under both the Copenhagen Re and Royal Specialty
25 payments --

D7fkwtc4

Beach - cross

1 MS. BAGLIN: If we could get rid of that box for a
2 minute, please.

3 Q. -- you have a memo as to Copenhagen Re rental value of
4 Royal Specialty buildings -- do you see that?

5 A. Correct, yes, I do see that.

6 Q. And you made those entries because Copenhagen Re and Royal
7 Specialty had some kind of notation by the insurer on either a
8 check or a check stub, something related with the payment; is
9 that right?

10 A. That would be correct. It likely would have been noted
11 upon a payment, a wire transfer, a check, et cetera.

12 Q. And do you see the other two payments in the middle there
13 that also both say building 1 is from Wausau in the amount of
14 2 million, one is from Tokio Marine in the amount of
15 1.6 million?

16 A. That is correct, yes.

17 Q. Are you claiming that in these few instances, because of
18 the notations, those payments should be considered to have been
19 allocated in accordance with the insurers' notations?

20 A. I can tell you that is the reference that was made by those
21 individual insurers as to how they attributed that payment
22 being issued.

23 Q. Those are notations that were made by the insurers; is that
24 correct?

25 A. Correct.

D7fkwtc4

Beach - cross

1 Q. At the time that you made this note here, were you aware
2 that WTCP's coverage counsel had written a letter to Tokio
3 Marin concerning their notation on the check?

4 A. I don't recall that.

5 MS. TAYLOR: Objection, your Honor.

6 THE COURT: Overruled.

7 Were you aware?

8 THE WITNESS: I may have, I don't recall, as I sit
9 here today, on that specific document.

10 Q. Do you recall that counsel wrote to Tokio Marin saying --

11 THE COURT: He said he didn't recall, Ms. Baglin.

12 Q. Do you recall that the actual notation on the check did not
13 say building, as you've written here, but explosion building?

14 A. That very well could be the case. Again, I'd have to see
15 the document --

16 THE COURT: The question is: Do you recall?

17 THE WITNESS: I don't recall specifically, no.

18 (Continued on next page)

D7FKWTC5ps

Beach - cross

1 Q. Is it your opinion, is it not, sir, then, that those
2 payments, despite your notation here in the memo column, were
3 for rental income; is that right?

4 A. Those that have been characterized as rent would be for
5 rental income, and those characterized as building would have
6 been for building.

7 Q. So payments that were made in November and I guess all of
8 them in November with the notation "building" you say were made
9 for loss of the building even though there was no documented
10 claim for loss of the building made until January of the next
11 year; is that right?

12 A. I believe insurers knew at that point in time there was
13 damage to the building. They could have attributed these
14 payments for building. But the notations call out that that's
15 how they referenced on their payment check or wire transfer.
16 There was a notation.

17 Q. OK. But the insured had not submitted a document of claim
18 for the building at that time that the payments were made;
19 isn't that right?

20 A. That is --

21 THE COURT: You've already established that.

22 Q. Now, you have a notation on Exhibit 3, C3, excuse me, the
23 \$32 million payment made by Hartford Fire. Do you see that,
24 sir?

25 A. Yes, I do.

D7FKWTC5ps

Beach - cross

1 Q. Was that a policy limits payment?

2 A. I believe that it was, yes.

3 Q. And at the time Hartford made that payment, did they state
4 expressly that the payment wasn't made with respect to any
5 particular element of loss incurred by the insurers?

6 A. I believe that would be the case, since I've made no
7 notation there.

8 Q. And notwithstanding that explicit statement, it's your
9 opinion, isn't it, that the Hartford payment was just for
10 property damage and rental income, nothing else?

11 A. Yes. Those were the known damages immediately after 9/11,
12 yes.

13 Q. And you concede, though, that Hartford and Hartford
14 accountant does not agree with you.

15 A. I couldn't hear that. I'm sorry.

16 THE COURT: He doesn't know what Hartford does with
17 that. He stated his opinion on that. Move on.

18 Q. Now, you agree, don't you, sir, that most of the payments
19 by the insurers were paid pursuant to settlement? Your chart
20 shows that, does it not?

21 A. I would agree, yes.

22 Q. And you agree, don't you, that there was no judicial
23 determination, no determination exchanged by the parties, none
24 by any neutral as to what claims were being honored and in what
25 amount that made up any of the settlement payments; isn't that

D7FKWTC5ps

Beach - cross

1 right?

2 A. Well, it's my opinion --

3 THE COURT: We've gone over that so many times.

4 THE WITNESS: I'm sorry?

5 THE COURT: Haven't we?

6 THE WITNESS: I -- it's my --

7 Q. You agree with that, sir?

8 THE COURT: The sequence, proofs of claims came in.

9 Money came back. That's the sequence. And then release is

10 given. How many more times do we have to put that in different
11 words and different phrases?

12 Q. You told us, Mr. Beach, that you read all the settlement
13 agreement, right?

14 A. Yes, I did.

15 Q. You're aware that coverage litigations were pending against
16 the various insurers at the time the settlements were entered?

17 A. That is correct.

18 Q. And you're aware, are you, that the settlement included not
19 just settlement of claims under the policy but settlement of
20 the litigations over coverage and how the insurers were
21 handling the claims; isn't that right?

22 A. Yes.

23 Q. And the lawsuits that were being resolved under these
24 agreements were often very complicated, weren't they?

25 A. Yes. I'm not an attorney, but I would consider them

D7FKWTC5ps

Beach - cross

1 complicated and lengthy.

2 Q. Some of the settlement agreements took several pages just
3 to describe them; isn't that right?

4 A. That is correct, yes.

5 THE COURT: That may be a function of the lawyers'
6 disability.

7 Q. You haven't provided an opinion on what the various
8 settlement agreements cover; isn't that right?

9 A. Well, I do have an opinion, if I could state that now.

10 THE COURT: No.

11 THE WITNESS: OK.

12 MS. BAGLIN: Could I call Mr. Beach's attention to
13 testimony at his deposition?

14 THE COURT: Do you want him to give his opinion?

15 MS. BAGLIN: Put it up?

16 THE COURT: You want him to give his opinion?

17 Q. Well, didn't you testify at your deposition that you didn't
18 find an opinion?

19 THE COURT: No. Do you want him to give an opinion?

20 MS. BAGLIN: No. I asked him what he was retained to
21 do, not give an opinion.

22 THE COURT: What was the question?

23 Q. Mr. Beach, you weren't retained to provide an opinion on
24 what the various settlement agreements cover; isn't that right?

25 A. Part of my opinion is to give expert testimony and a report

D7FKWTC5ps

Beach - cross

1 as to what payments were made for. And I do have an opinion as
2 to what the settlement agreements pertain to, yes, I do.

3 Q. You weren't retained to provide expert testimony concerning
4 the coverage litigation, or the litigation of settlements, were
5 you?

6 A. No, I -- no, I was not.

7 Q. Your expertise is as an adjustor, correct?

8 A. That is correct.

9 Q. And when you've adjusted property damage claims that went
10 into litigation, you weren't directly involved in the
11 litigation or any negotiations to resolve the litigation,
12 correct?

13 A. Through litigation. I'm not an attorney, so no.

14 Q. And you don't have any firsthand knowledge of the
15 negotiation or drafting of any of the settlements here; isn't
16 that correct?

17 A. No, I only know what they speak of and what my opinions are
18 as to what payments were made for.

19 Q. Is it your opinion here that no matter what the terms of
20 the settlement agreements are, that the payments were for
21 either property damage or rental income and nothing else?

22 A. That is correct. In fact, I've given that opinion earlier
23 and those settlement agreements do mention on what basis some
24 of those settlement agreements were made for, payments were
25 made for.

D7FKWTC5ps

Beach - cross

1 Q. I'd like to offer into evidence at this time, your Honor,
2 Joint Exhibit 22, which is the ACE Bermuda settlement
3 agreement. And I certainly don't intend to go through all of
4 the settlement agreements, but I'd like to look at a few of
5 them just by way of illustration.

6 THE COURT: They are questions the witness has a basis
7 to answer?

8 MS. BAGLIN: Excuse me, your Honor?

9 THE COURT: Are you going to ask the witness a
10 question?

11 MS. BAGLIN: Yes.

12 THE COURT: Yes?

13 MS. BAGLIN: Yes.

14 THE COURT: Does the witness know anything about this?

15 MS. BAGLIN: The witness has reviewed all these
16 settlement agreements. He testified to that earlier. He also
17 gave an opinion on what they cover.

18 THE COURT: They cover what they say they cover. Why
19 do you need a witness, Ms. Baglin?

20 Ms. Baglin, answer me. They say what they cover, do
21 they not?

22 MS. BAGLIN: They do, your Honor.

23 THE COURT: Do we need a witness to tell us what the
24 document says?

25 MS. BAGLIN: Well, this witness has said he's read

D7FKWTC5ps

Beach - cross

1 them, and apparently he's disregarding the language of the
2 agreement. I just wanted to point out to be sure that --

3 THE COURT: Point it out to me.

4 MS. BAGLIN: -- that it is really what it is with
5 respect to the settlement.

6 THE COURT: Point it out to me. What does it cover?
7 Q. You're familiar with the --

8 THE COURT: Answer me. What does it cover?

9 MS. BAGLIN: This particular ACE Bermuda settlement
10 covers all settled claims, which includes actual, potential, or
11 threatened claims. And it includes all property risks and
12 peril insured under the policy, including any losses of
13 liability of any kind under and relating to the policy.

14 THE COURT: I have it. Thank you very much. What's
15 next?

16 MS. BAGLIN: And peril, your Honor, the release
17 provisions of this agreement --

18 THE COURT: All existing and potential. I got that.

19 MS. BAGLIN: But they specifically also state that
20 they're releasing claims for extra-contractual or other damages
21 or release based on alleged bad faith, breach of the duty of
22 good faith and fair dealing, unfair claim practice, unfair
23 trade practice, and any improper act or failure to act in
24 connection with ACE's investigation handling.

25 THE COURT: How about patent infringement? Has it

D7FKWTC5ps

Beach - cross

1 gotten into that?

2 MS. BAGLIN: Only related to their handling of the
3 claims, your Honor.

4 THE COURT: I got that. Thank you.

5 Q. Now, Mr. Beach, as an adjustor, you filled out some form
6 policyholder release; isn't that right?

7 A. Yes, that is correct.

8 Q. And in those cases in your experience with those form
9 releases the insured didn't pay anything extra to get the
10 release; isn't that right?

11 A. That is correct.

12 Q. And you think that maybe that's also true for claims that
13 go into litigation; am I correct?

14 A. Yes.

15 Q. But you never negotiated or weren't directly involved in a
16 coverage litigation settlement, so you don't know; isn't that
17 right?

18 A. When you say "involved," the information I've developed in
19 the handling and review of the claim may have been taken into
20 consideration by the attorneys. But I am not directly drafting
21 long-term releases such as we're referring to today.

22 Q. You've never been directly involved in the negotiation of a
23 settlement; isn't that right?

24 A. That's correct.

25 THE COURT: I tell you again for the tenth time, I'm

D7FKWTC5ps

Beach - cross

1 prepared to find that part of the money was paid for potential
2 claims. Do you understand that?

3 MS. BAGLIN: OK. May I just make two other short
4 points about the settlement agreement?

5 Q. It's true, isn't it, sir, some of these insurers paid more
6 than their policy limits?

7 A. It is my findings that, yes, some insurers paid more. But,
8 however, as we previously demonstrated, multiple insurers paid
9 less, to the tune of nearly 900 -- 97 -- \$97 million, excuse
10 me, that is correct.

11 Q. And those insurers who paid less included IRI in its 7
12 World Trade Center settlement; isn't that right?

13 A. That is correct. We've shifted gears now, but, yes, that
14 is correct, on 7.

15 Q. And in all the documents you looked at, sir, did you see
16 the final claims report from the adjustors for IRI?

17 A. I did, yes.

18 Q. And you saw that they were quite concerned that the
19 appraisal was going to come in at higher than policy limits,
20 and they wanted to settle the case; isn't that right?

21 A. They do mention that, as we've mentioned earlier. There
22 was no final appraisal. The adjustor does, however, comment
23 upon those values, I think, after the settlement had been
24 reached.

25 Q. And they specifically said, did they not that, they had

D7FKWTC5ps

Beach - cross

1 been posturing throughout the litigation so they could
2 hopefully get a settlement that was less than the policy limit.
3 Isn't that right?

4 A. Yes. I wouldn't be able to say it in those exact terms,
5 but yes.

6 Q. I'd like to talk for a moment about the sharing payment
7 under the IRI settlement that Ms. Taylor asked you about. That
8 settlement agreement provided for that sharing. I think you
9 pointed it out to the Court in paragraph 10 on page 9. Did it
10 not?

11 A. Yes. I do recall that.

12 Q. That's a separate paragraph from paragraph 1 that addressed
13 the complete and final settlement of all claims against IRI, is
14 it not?

15 A. I would assume that it is, yes.

16 Q. And in that paragraph 1 but before paragraph 10, there's a
17 series of paragraphs which relate to the release or dismissal
18 of all known claims against IRI, once the \$18 million was paid,
19 isn't that true?

20 A. It very well could be. I could review the document, but I
21 have no reason not to believe those statements.

22 Q. And you are aware that the \$11.9 million payment is an
23 amount that was agreed to in a separate settlement agreement
24 between IRI and 7 World Trade Company, are you not?

25 A. Yes. There was eventually a settlement agreement between

D7FKWTC5ps

Beach - cross

1 the two parties which outlined what was being -- the amount
2 that was being paid.

3 Q. And that settlement was entered into only after 7 World
4 Trade Company filed the demand for arbitration asserting claims
5 against IRI regarding its share of the subrogation recovery and
6 after the parties went to mediation over it; isn't that right?

7 A. I don't know the timing of those dates and events.

8 Q. But you know there was litigation over it?

9 A. Correct, yes.

10 Q. And then there was a settlement agreement that settled that
11 litigation, and it included an agreement as to an amount that
12 would be paid of \$11.9 million; is that right?

13 A. Correct. That referred back to the original settlement
14 agreement in paragraph 10, which indicated how any recovery
15 funds would be distributed between the two parties.

16 Q. And that \$11.9 million payment was made in late December of
17 2011 or early 2012, long after the last of the \$819 million had
18 been paid in 2005; isn't that right?

19 A. I would agree, yes.

20 Q. The \$11.9 million payment was made before you issued the
21 first of your three reports on 7 World Trade Center; isn't that
22 right?

23 A. I believe that is the case, yes.

24 Q. But you didn't include it in your first report, right?

25 A. Correct.

D7FKWTC5ps

Beach - cross

1 Q. And in very first report, you didn't discuss or even
2 mention paragraph 10, the sharing provisions, right?

3 A. That is correct.

4 Q. And it wasn't until your most recent 7 World Trade Center
5 report that you added sections discussing paragraph 10, and you
6 added the 11.9 to the \$819 million, now finding that the total
7 amount of insurance is \$831 million; isn't that right?

8 A. Yes, that is correct.

9 Q. You thought the changes would lead to a better result for
10 the aviation defendants in the dispute; isn't that right?

11 MS. TAYLOR: Objection.

12 THE COURT: Sustained.

13 Q. Mr. Beach, do you recall me asking at your deposition on
14 March 15th of 2013, at page 48, line 11 through 17, the
15 following question and you giving the following answer?

16 THE COURT: The point was sustained on objection. So
17 this is sustained on objection also, Ms. Baglin. Don't try to
18 get something past me, please. OK? Ms. Baglin?

19 MS. BAGLIN: Yes, your Honor.

20 THE COURT: Don't try to get something past me. Some
21 judges get very annoyed with that.

22 Q. Mr. Beach, you can't say, can you, that the \$11.9 million
23 payment was an additional payment under the policy per se,
24 correct?

25 THE COURT: Objection sustained.

D7FKWTC5ps

Beach - cross

1 Q. IRI wasn't trying to get the aviation defendants in their
2 subrogation action to advance moneys that IRI owed to 7 under
3 the policy, were they?

4 THE COURT: Do you know the answer to that?

5 THE WITNESS: I don't know the answer to that
6 specifically, no. I only know the 11 million --

7 THE COURT: Stop, stop, stop.

8 THE WITNESS: No. The answer is no.

9 Q. And IRI had already reached a final settlement with 7 --

10 THE COURT: He said the answer was no. That's a no,
11 right?

12 MS. BAGLIN: This is a different question, your Honor.

13 THE COURT: It's different words but the same
14 question.

15 Q. After 7 World Trade Company received the \$819 million,
16 under the original settlement agreement with IRI, they couldn't
17 have submitted any additional proofs of loss under the IRI
18 policy; isn't that correct?

19 A. That is correct.

20 Q. Any issues regarding the sharing payments were policy
21 issues; is that right?

22 A. I know there are mentioned in the IRI policy regarding
23 subrogation, and, again, the moneys that were paid were as a
24 result of a recovery action and in agreement that was outlined
25 in the release agreement between the two parties, under

D7FKWTC5ps

Beach - cross

1 paragraph 10, as we've discussed.

2 Q. A claim by 7 World Trade Company with respect to its right
3 to share in IRI's subrogation recovery wouldn't be submitted to
4 IRI for adjustment under the policy; isn't that right?

5 THE COURT: It is what it is, Ms. Baglin.

6 Q. I'd like to ask you briefly, sir, about one of the payments
7 you list on Exhibit B4. It's the \$216,100,000 payment that you
8 say was made by Royal Indemnity to Specialty. Does that
9 amount, the \$216 million, include a \$17.5 million payment made
10 in July of 2017 by Royal and in Allianz Insurance Group PLC and
11 RSA Overseas Holdings No. 1 and No. 2?

12 A. Yes, it does.

13 Q. Those companies were required to make that payment under a
14 settlement agreement; is that right?

15 A. That is correct.

16 Q. They're foreign companies, are they not?

17 A. I would characterize them as the parent company to the
18 Royal Indemnity insurers who participated in this program.

19 Q. At the time they were sued, it's true, is it not, that the
20 U.S. subsidiary that had actually insured the World Trade
21 Center plaintiff had paid only a small amount of a judgment
22 that had been entered against them in the coverage litigation;
23 isn't that right?

24 A. At a given time there was a small amount, but as you can
25 see from this schedule, yeah, they eventually paid much larger

D7FKWTC5ps

Beach - cross

1 amounts, but yes.

2 Q. Did the U.S. subsidiary who actually provided the insurance
3 coverage actually settle in full all of its coverage
4 obligations, did they not?

5 A. Yes, they did, through a settlement agreement.

6 MS. BAGLIN: I would like to offer at this time Joint
7 Exhibit 36, which is stipulation of settlement dated July 13,
8 2007.

9 THE COURT: What's the relevance? Does it tell me the
10 same thing you just told me before, that Royal Indemnity's
11 parents paid the deficiency that Royal Indemnity couldn't pay?

12 MS. BAGLIN: No, that is not the case, your Honor.
13 This is the settlement agreement with the actual insurer, the
14 subsidiary. They settled the claims in full. And their
15 settlement provides that the coverage was being fully bought
16 out, paid, exhausted, and satisfied in full, by the
17 subsidiary's payment.

18 THE COURT: So?

19 MS. BAGLIN: So the settlement with the parent
20 company, which came later, was for \$17.5 million. And at this
21 time I would like to offer Joint Exhibit 37, which is that
22 settlement agreement and release, settling the suit that had
23 been brought against the foreign parents for \$17.5 million.

24 THE COURT: What about it?

25 MS. TAYLOR: Objection, your Honor, to this line of

D7FKWTC5ps

Beach - cross

1 questioning.

2 THE COURT: I'll state it in a minute. But what about
3 it?

4 MS. BAGLIN: Your Honor, this settlement agreement
5 specifically provides -- and, again, it came after --

6 THE COURT: What about it?

7 MS. BAGLIN: It provides that the -- expressly
8 represented, both sides agree, the payment of 17.5 million was
9 not made pursuant to or in connection with any insurance
10 contract, binder, or advice of insurance issued, assumed, or
11 otherwise obtained through Royal Indemnity. That's the
12 subsidiary.

13 THE COURT: I accept what you say as the evidence. We
14 don't need the document. The objection to the document is
15 sustained.

16 Q. I would just like to clear up a few other things that were
17 raised with you on direct, Mr. Beach, if you don't mind. May I
18 have C4 put up, please. This is the chart you created.

19 I would like to call your attention to the top part of
20 the chart, the appraisal panel findings. I think you pointed
21 out to the Judge earlier that this was a partial evaluation,
22 that it didn't include tenant improvements. Is that right?

23 A. That is correct.

24 Q. And tenant improvements can be a fairly substantial amount,
25 can they not?

D7FKWTC5ps

Beach - cross

1 THE COURT: It can be anything. It can be hundreds of
2 thousands of dollars.

3 Q. In the 7 World Trade Center claim, they were quite
4 significant, were they not?

5 A. Could have been. The final determination was not made of
6 that value by the appraisal panel.

7 Q. In fact you have income rental numbers here, but the
8 appraisal panel never got to business income at all did, it?

9 THE COURT: He said that. He said it.

10 Q. Going back to the appraisal itself --

11 THE COURT: Ms. Baglin, I understand it does not
12 include personal properties, does not include tenants'
13 improvements. I understand that.

14 MS. BAGLIN: A different point, your Honor.

15 Q. The appraisal proceedings, Mr. Beach, only involved
16 Allianz, Travelers, Gulf, IRI, and Royal Indemnity; isn't that
17 right?

18 A. I have no reason to dispute that, but, yes --

19 Q. It involved all the insurers who issued insurance for trade
20 center properties; isn't that right?

21 A. That is correct.

22 MS. BAGLIN: Your Honor, may I just have a minute? I
23 think I may be done.

24 Thank you. That's all.

25 THE COURT: Is there any redirect or shall we excuse

D7FKWTC5ps

Beach - cross

1 Mr. Beach?

2 MS. TAYLOR: No, your Honor, no redirect.

3 THE COURT: Mr. Beach, you're excused. Thank you.

4 THE WITNESS: Thank you, your Honor.

5 (Witness excused)

6 THE COURT: Who's the next witness?

7 MR. PODESTA: The next witness tomorrow morning will
8 be Mr. Fischel. If you wish, we could take up the remaining 20
9 minutes with deposition designation readings, your Honor.

10 THE COURT: No. I don't think you probably even need
11 the depositions. Let's break now.

12 All right. 10 o'clock tomorrow, Mr. Fischel. Thank
13 you.

14 (Adjourned to 10:00 a.m., July 16, 2013)

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22

23

24

25

INDEX OF EXAMINATION

Examination of:	Page
MICHAEL S. BEACH	
Direct By Ms. Taylor47
Cross By Ms. Baglin	118

DEFENDANT EXHIBITS

Exhibit No.	Received
D-276
C483
4	131

JOINT EXHIBITS

Exhibit No.	Received
212	100
213	101
201	113
C3	140